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भारत का राजपत्र
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सं. 24] नई दिल्ली, जून 16—जून 22, 2024, शनिवार/ ज्येष्ठ 26 —आषाढ़ 1, 1946
No. 24] NEW DELHI, JUNE 16—JUNE 22, 2024, SATURDAY/JYAISHTHA 26– ASHADHA 1, 1946

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मन्त्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 14 जून, 2024

का.आ. 1152.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्द्वारा,सरकार भारत के दूतावास, विल्नुस मेँ श्री अभिषेक यादव, सहायक अनुभाग अधिकारी को जून 14, 2024 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी. 4330/1/2024(20)]

एस.आर.एच. फहमी, निदेशक (सीपीवी-I)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 14th June, 2024

S.O. 1152.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Abhishek Yadav, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Vilnius, to perform the consular services as Assistant Consular Officer with effect from June 14, 2024.

[F. No. T. 4330/01/2024(20)]

S.R.H FAHMI, Director (CPV-I)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 17 जनवरी, 2024

का.आ. 1153.—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री एस वी राजू, भारत के अपर महा-सालिसिटर को, माननीय कर्नाटक उच्च न्यायालय के समक्ष दिल्ली विशेष पुलिस स्थापना (केंद्रीय अन्वेषण ब्यूरो) की ओर से डी. के. शिवाकुमार बनाम कर्नाटक राज्य और अन्य के मामले में रिट अपील सं. 646/2023 और आरसी 10(ए)/2020/सीबीआई/एसीबी/बीएलआर से संबंधित अन्य कार्यवाहियों के संचालन के लिए तारीख 29 नवंबर, 2023 से मामले का निपटान होने तक, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/32/2023-एवीडी- II]

कुंदन नाथ, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 17th January, 2024

S.O. 1153.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri S.V. Raju, Additional Solicitor General of India, as Special Public Prosecutor for conducting the Writ Appeal number 646/2023 and other proceedings pertaining to RC10(A)/2020-CBI/ACB/BLR in the matter of D.K. Shivakumar vs. State of Karnataka and others on behalf of the Delhi Special Police Establishment (Central Bureau of Investigation) before the Hon'ble High Court of Karnataka with effect from 29th November, 2023 till the disposal of the Case.

[F. No. 225/32/2023-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 12 अप्रैल, 2024

का.आ. 1154.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए झारखंड राज्य सरकार, गृह, कारागार एवं आपदा प्रबंधन विभाग, झारखंड, रांची, की अधिसूचना सं. 10/सी.बी.आई.-415/2023-5456/रांची, दिनांक 22.11.2023 के माध्यम से जारी सम्मति से श्री राम भज्जु, ओवरसियर, मगध कोलियरी, सीसीएल, चतरा, झारखंड के विरुद्ध भ्रष्टाचार निवारण अधिनियम, 1988 (वर्ष 2018 में यथासंशोधित) की धारा 7 के तहत कारित अपराधों के लिए श्री नागेश्वर राम, पुत्र श्री लाटन राम द्वारा दिनांक 08.11.2023 को दर्ज करायी गई शिकायत, जिसके आधार पर दिनांक 18.03.2024 को एक सीबीआई मामला सं. आरसी03ए/2024-आर दर्ज किया गया है, से उत्पन्न अपराध (धों) का अन्वेषण करने के लिए तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली

विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से, दिनांक 18.03.2024 से) समस्त झारखंड राज्य में करती है।

[फा. सं. 228/18/2024-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 12th April, 2024

S.O. 1154.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Jharkhand, issued vide Notification No.10/C.B.I-415/2023-5456/Ranchi dated 22.11.2023, Home, Prisons and Disaster Management Department, Jharkhand, Ranchi, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 18.03.2024) to the whole State of Jharkhand for investigation into the offence(s) arising out of the complaint dated 08.11.2023 lodged by Shri Nageshwar Ram S/o Late Latan Ram, against Shri Ram Bhajju, Overseer, Magadh Colliery, CCL, Chatra, Jharkhand u/s 7 of Prevention of Corruption Act, 1988 (as amended in 2018), based on which a CBI case RC03(A)/2024-R has been registered on 18.03.2024 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/18/2024-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 25 अप्रैल, 2024

का.आ. 1155.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए छत्तीसगढ़ राज्य सरकार की अधिसूचना सं. एफ-4-4/गृह-सी/2024, दिनांक 16.02.2024 और संशोधित अधिसूचना सं. एफ-4-4/गृह-सी/2024, दिनांक 10.04.2024, गृह विभाग (सी-सेक्शन), मंत्रालय, महानदी भवन, नवा रायपुर, अटल नगर, छत्तीसगढ़ शासन के माध्यम से जारी सम्मति से, राज्य सेवा परीक्षा, 2021 की भर्ती प्रक्रिया में अनियमितताओं की शिकायतों के संबंध में भारतीय दंड संहिता की धारा 420, 120-बी एवं भ्रष्टाचार निवारण अधिनियम, 1988 (2018 में यथा-संशोधित) की धारा 7/7-ए और धारा 12 के तहत थाना-अर्जुण्डा, जिला-बालोद में पंजीकृत अपराध सं. 28/2024 तथा भारतीय दंड संहिता की धारा 120-बी, 420 एवं भ्रष्टाचार निवारण अधिनियम, 1988 (2018 में यथा-संशोधित) की धारा 7/7-ए और धारा 12 के तहत जिला-रायपुर के एसीबी/ईओडब्ल्यू थाने में पंजीकृत अपराध सं. 05/2024 से जुड़े मामलों मे तलाशी एवं अन्वेषण करने तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त छत्तीसगढ़ राज्य में करती है।

[फा. सं. 228/19/2024-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 25th April, 2024

S.O. 1155.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Chhattisgarh, issued vide Notification No.F-4-4/Home-C/2024 dated 16.02.2024 and Amended Notification No.F-4-4/Home-C/2024 dated 10.04.2024, Home Department (C-Section), Mantralaya, Mahanadi Bhawan, Nava Raipur, Atal Nagar, Government of Chhattisgarh, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the entire State of Chhattisgarh to search and investigate into the matters pertaining to the Crime No. 28/2024 concerning the complaints of irregularities in the recruitment process of State Service Examination, 2021, registered at Police Station-Arjunda, District-Balod under Section 420, 120-B of IPC & sections 7/7-A and 12 of the Prevention of Corruption Act, 1988 (as amended in 2018) and Crime No. 05/2024 registered with ACB/EOW Police Station of District-Raipur under Sections 120B, 420 of IPC and Sections 7/7-A and 12 of the Prevention of Corruption Act, 1988 (as amended in 2018) and any attempt, abetment and/or conspiracy, in

relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/19/2024-AVD-II]
KUNDAN NATH, Under Secy.

नई दिल्ली, 3 मई, 2024

का.आ. 1156.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, असम राज्य सरकार की अधिसूचना ज्ञापन सं. एचएमए-19015/19/2022-पोल(ए)-एच&पी/231(ईसीएफ-250762)-ए, दिनांक 14.03.2024, राजनीतिक (ए) विभाग :: दिसपुर, असम सरकार के माध्यम से जारी सम्मति से, असम के पश्चिमी कार्बी आंगलोंग जिला के जिरीकिंडिंग थाना अंतर्गत मुकरोह में दिनांक 22/11/2022 को हुई गोलीवारी की घटना, जिसके परिणामस्वरूप 5 (पाँच) नागरिकों और 1 (एक) होमगार्ड की मृत्यु हो गई थी, के संबंध में (1) जिरीकिंडिंग थाना में भारतीय दंड संहिता (आईपीसी) की धाराएँ 379/353/34 सपठित असम वन विनियमन (एएफआर) अधिनियम की धारा 40/41 के अंतर्गत दर्ज मामला सं. 09/2022 (2) जिरीकिंडिंग थाना में भारतीय दंड संहिता (आईपीसी) की धाराएँ 147/148/149/326/333/353/385/427/302/307 सपठित आयुध (आर्म्स) अधिनियम की धारा 27 और **लोक संपत्ति नुकसान निवारण अधिनियम** की धारा 3 के अंतर्गत दर्ज मामला सं. 10/2022 और (3) जिरीकिंडिंग थाना में भारतीय दंड संहिता (आईपीसी) की धाराएँ 447/448/436/427 सपठित **लोक संपत्ति नुकसान निवारण अधिनियम** की धारा 04 के अंतर्गत दर्ज मामला सं. 11/2022 से जुड़े अपराधों का अन्वेषण करने तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए, दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त असम राज्य में करती है।

[फा. सं. 228/07/2023-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 3rd May, 2024

S.O. 1156.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act 25 of 1946), the Central Government with the consent of the State Government of Assam, issued vide Notification Memo No. HMA-19015/19/2022-POL(A)-H&P/231(ECF-250762)-A dated 14.03.2024, Political (A) Department :: Dispur, Government of Assam, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole State of Assam for carrying out investigation of the offences relating to (1) Zirikindeng PS Case No. 09/2022 u/s 379/353/34 IPC r/w Sec 40/41 AFR Act, (2) Zirikindeng PS Case No. 10/2022 u/s 147/148/149/326/333/353/385/427/302/307 IPC r/w Sec 27 Arms Act and Sec 3 PDPP Act and (3) Zirikindeng PS Case No. 11/2022 u/s 447/448/436/427 IPC r/w Sec 04 of PDPP Act registered in connection with the incident of firing on 22/11/2022 at Mukrow under Zirikindeng PS, West Karbi Anglong District, Assam resulting into the death of 5 (five) civilians and 1 (one) Home Guard and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/07/2023-AVD-II]
KUNDAN NATH, Under Secy.

नई दिल्ली, 3 मई, 2024

का.आ. 1157.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मेघालय राज्य सरकार की अधिसूचना ज्ञापन सं. पोल.130/2023/12-ए शिलांग दिनांक 16.02.2024, गृह (राजनीतिक) विभाग, मेघालय राज्य सरकार के माध्यम से जारी सम्मति से नार्टियांग थाना, पश्चिम जैंतिया हिल्स जिला में भा.दं.सं. की धारा 302/326/120बी/34 के अंतर्गत दंडनीय अपराधों के संबंध में दर्ज मामला सं. 39(11)2022 से उत्पन्न अपराध(धों) तथा

ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए, दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मेघालय राज्य में करती है।

[फा. सं. 228/09/2024-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 3rd May, 2024

S.O. 1157.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Meghalaya, issued vide Notification Memo No. POL.130/2023/12-A Shillong dated 16.02.2024, Home(Political) Department, Government of Meghalaya, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole State of Meghalaya for the investigation of offences punishable under Section 302/326/120B/34 IPC arising out of Case No. 39(11)2022 registered at Nartiang Police Station, West Jaintia Hills District and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/09/2024-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 13 मई, 2024

का.आ. 1158.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रमाकांत रघुराज यादव, अधिवक्ता को, दिल्ली विशेष पुलिस स्थापन (केंद्रीय अन्वेषण ब्यूरो) द्वारा संस्थित मामलों, जिन्हें नीचे दी गई सारणी के स्तंभ (2) और स्तंभ (3) में वर्णित किया गया है, का उक्त सारणी के स्तंभ (4) में वर्णित न्यायालयों में और किसी अपील या पुनरीक्षण न्यायालय, जिसे विधि द्वारा स्थापित किया गया है, में उक्त मामलों से उद्भूत होने वाली कोई अपील, पुनरीक्षण या अन्य मामलों के अभियोजन के संचालन के लिए प्रभार ग्रहण करने की तारीख से, मामलों के निपटान तक, या अगले आदेश तक, इनमें से जो भी पूर्वतर हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

क्र.सं.	आरसी.सं.	न्यायालय मामला सं.	न्यायालय का नाम
(1)	(2)	(3)	(4)
1.	आरसी. 10/ई/96-ईओयू-VII/नई दिल्ली	661/पुलिस वारंट विचारणीय मामला/2009	अपर मुख्य मेट्रोपोलिटन मजिस्ट्रेट तीसरा न्यायालय, मुंबई
2.	आरसी. 7/ई/96/सीबीआई/ईओबी/मुंबई	774/पुलिस वारंट विचारणीय मामला/2009	
3.	आरसी. 6/ई/96-ईओयू.IX/नई दिल्ली	696/पुलिस वारंट विचारणीय मामला/2009	
4.	आरसी. 12/ई/99/सीबीआई/ईओबी/मुंबई	699/पुलिस वारंट विचारणीय मामला/2009	
5.	आरसी. 7/ई/98/सीबीआई/ईओबी/मुंबई और आरसी. 8/ई/98/सीबीआई/ईओबी/मुंबई	1888/सीबीआई पुलिस मामला/2000 (933/पुलिस वारंट विचारणीय मामला/09)	
6.	आरसी. 2/ई/2001/सीबीआई/ईओबी/मुंबई	117/सीबीआई पुलिस	

		मामला/2001 (728/पुलिस वारंट विचारणीय मामला/2009)	
7.	आरसी. 8/ई/99/सीबीआई/ईओबी/मुंबई और आरसी. 9/ई/99/सीबीआई/ईओबी/मुंबई	118/सीबीआई पुलिस मामला/2001 (930/पुलिस वारंट विचारणीय मामला/2009)	
8.	आरसी. 7/ई/2000/सीबीआई/ईओबी/मुंबई	775/पुलिस वारंट विचारणीय मामला/2009	
9.	आरसी. 10/ई/99/सीबीआई/ईओबी/मुंबई	108/सबीआई पुलिस मामला/2002 (932/पुलिस वारंट विचारणीय मामला/2009)	
10.	आरसी. 5/ई/99/सीबीआई/ईओबी/मुंबई	184/सीबीआई पुलिस मामला/2002 (884/पुलिस वारंट विचारणीय मामला/2009)	
11.	आरसी. 3/ई/2003/सीबीआई/ईओबी/मुंबई	3/सीबीआई पुलिस वारंट विचारणीय मामला/2004 (672/पुलिस वारंट विचारणीय मामला/2009) और 672/पुलिस वारंट विचारणीय मामला/2014 अनुपूरक सीएस	
12.	आरसी. 2/ई/2002/सीबीआई/ईओबी/मुंबई	211/सीबीआई पुलिस वारंट विचारणीय मामला/2004 (725/पुलिस वारंट विचारणीय मामला/2009)	
13.	आरसी. 6/ई/2003/सीबीआई/ईओबी/मुंबई	886/पुलिस वारंट विचारणीय मामला/2009	
14.	आरसी. 4/ई/2003/सीबीआई/ईओबी/मुंबई	801/पुलिस वारंट विचारणीय मामला/2009	
15.	आरसी. 7/ई/2003/सीबीआई/ईओबी/मुंबई	676/पुलिस वारंट विचारणीय मामला/2009	

[फा. सं. 225/15/2024-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 1158.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Ramakant Raghuraj Yadav, Advocate as Special Public Prosecutor for conducting prosecution of cases instituted by the Delhi Special Police Establishment

(Central Bureau of Investigation) mentioned in column (2) and (3) of the table below, in the Court mentioned in column (4) of the said Table and any appeal, revision or other matters arising out of said cases in any appellate or revisional Court established by law from the date of assumption of charge, till disposal of the cases, or till further order, whichever is earlier.

TABLE

SI. No.	RC. No.	Court Case No.	Name of the Court
(1)	(2)	(3)	(4)
1	RC.10/E/96-EOU-VII/New Delhi	661/Police Warrant Triable Case/2009	Additional Chief Metropolitan Magistrate 3rd Court, Mumbai
2	RC. 7/E/96/CBI/EOB/ Mumbai	774/Police Warrant Triable Case/2009	
3	RC. 6/E/96-EOU.IX/New Delhi	696/Police Warrant Triable Case/2009	
4	RC.12/E/99/CBI/EOB/Mumbai	699/Police Warrant Triable Case/2009	
5	RC. 7/E/98/CBI/EOB/Mumbai & RC. 8/E/98/CBI/EOB/Mumbai	1888/CBI Police Case/2000 (933/Police Warrant Triable Case/09)	
6	RC.2/E/2001/CBI/EOB/ Mumbai	117/CBI Police Case/2001 (728/Police Warrant Triable Case/2009)	
7	RC. 8/E/99/CBI/EOB/Mumbai & RC. 9/E/99/CBI/EOB/Mumbai	118/CBI Police Case/2001 (930/Police Warrant Triable Case/2009)	
8	RC. 7/E/2000/CBI/EOB/ Mumbai	775/Police Warrant Triable Case/2009	
9	RC.10/E/99/CBI/EOB/Mumbai	108/CBI Police Case/2002 (932/Police Warrant Triable Case/2009)	
10	RC. 5/E/99/CBI/EOB/Mumbai	184/CBI Police Case/2002 (884/Police Warrant Triable Case/2009)	
11	RC.3/E/2003/CBI/EOB/ Mumbai	3/CBI Police Warrant Triable Case/2004 (672/Police Warrant Triable Case/2009) & 672/Police Warrant Triable Case/2014 Suppl. CS	Additional Chief Metropolitan Magistrate 19th Court, Mumbai
12	RC. 2/E/2002/CBI/EOB/ Mumbai	211/CBI Police Warrant Triable Case/2004 (725/Police Warrant Triable Case/09)	
13	RC. 6/E/2003/CBI/EOB/ Mumbai	886/Police Warrant Triable Case/2009	
14	RC. 4/E/2003/CBI/EOB/ Mumbai	801/Police Warrant Triable Case/2009	
15	RC. 7/E/2003/CBI/EOB/ Mumbai	676/Police Warrant Triable Case/2009	

[F. No. 225/15/2024-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 14 मई, 2024

का.आ. 1159.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रबिन्द्रनाथ दाश, अधिवक्ता को उक्त सारणी के स्तंभ (5) में उल्लिखित न्यायालयों में, नीचे दी गई सारणी के स्तंभ (2) और (4) में उल्लिखित दिल्ली विशेष पुलिस स्थापन (केंद्रीय अन्वेषण ब्यूरो) द्वारा स्थापित मामलों के अभियोजन और विधि द्वारा स्थापित किसी अपीलीय अथवा पुनरीक्षण न्यायालय में इन मामलों से उत्पन्न अपील, पुनरीक्षण या अन्य मामलों का संचालन करने के लिए विशेष लोक अभियोजक के रूप में उनके पदभार ग्रहण करने की तारीख से तीन वर्षों के लिए या मामलों के निपटान होने तक, जो भी पहले हो, विशेष लोक अभियोजक नियुक्त करती है, अर्थात्:-

सारणी

क्र. सं.	आरसी सं.	शाखा का नाम	विशेष पुलिस स्थापन/विचारण सं.	न्यायालय का नाम
(1)	(2)	(3)	(4)	(5)
1	आरसी0562014एस0010	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 05/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
2	आरसी0562014एस0011	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 06/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
3	आरसी0562014एस0018	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 13/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
4	आरसी0562014एस0023	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 18/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
5	आरसी0562014एस0024	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 19/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
6	आरसी0562014एस0032	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 27/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
7	आरसी0562014एस0033	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 28/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
8	आरसी0562014एस0037	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 32/2014 विशेष पुलिस स्थापन 32/2014 (ख)	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
9	आरसी0562014एस0038	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 33/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
10	आरसी0562014एस0040	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 35/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
11	आरसी0562014एस0042	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 37/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
12	आरसी0562014एस0046	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 41/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
13	आरसी0562014एस0047	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 42/2014 विचारण 02/2017	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर विशेष न्यायाधीश सीबीआई, भुवनेश्वर
14	आरसी0562014एस0049	एसीबी, भुवनेश्वर	विचारण 05/2018	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
15	आरसी0562014एस0050	एसीबी, भुवनेश्वर	विचारण 01/2018	विशेष न्यायाधीश सीबीआई, भुवनेश्वर
16	आरसी0151994एस0052	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 32/1994	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
17	आरसी0151998एस0013	एसीबी, भुवनेश्वर	विशेष पुलिस	विशेष मुख्य न्यायिक

			स्थापन 04/1998	दंडाधिकारी, भुवनेश्वर
18	आरसी0152001एस0017	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 10/2003	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
19	आरसी0562014एस0013	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 08/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर
20	आरसी0562014एस0028	एसीबी, भुवनेश्वर	विशेष पुलिस स्थापन 23/2014	विशेष मुख्य न्यायिक दंडाधिकारी, भुवनेश्वर

[फा. सं. 225/06/2024-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 14th May, 2024

S.O. 1159.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Rabindranath Dash, Advocate as Special Public Prosecutor for conducting prosecution of cases instituted by the Delhi Special Police Establishment (Central Bureau of Investigation) as mentioned in column (2) and (4) of the table below, in the Courts mentioned in column (5) of the said Table and any appeal, revision or other matter arising out of these cases in any appellate or revisional Court established by law, for a period of three years from the date of assumption of charge or till disposal of the cases, whichever is earlier, namely

TABLE

Sl. No.	**RC. No.**	**Branch Name**	**Special Police Establishment/ Trial No.**	**Name of the Court**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
1	RC0562014S0010	ACB, Bhubaneswar	Special Police Establishment 05/2014	Special CJM, Bhubaneswar
2	RC0562014S0011	ACB, Bhubaneswar	Special Police Establishment 06/2014	Special CJM, Bhubaneswar
3	RC0562014S0018	ACB, Bhubaneswar	Special Police Establishment 13/2014	Special CJM, Bhubaneswar
4	RC0562014S0023	ACB, Bhubaneswar	Special Police Establishment 18/2014	Special CJM, Bhubaneswar
5	RC0562014S0024	ACB, Bhubaneswar	Special Police Establishment 19/2014	Special CJM, Bhubaneswar
6	RC0562014S0032	ACB, Bhubaneswar	Special Police Establishment 27/2014	Special CJM, Bhubaneswar
7	RC0562014S0033	ACB, Bhubaneswar	Special Police Establishment 28/2014	Special CJM, Bhubaneswar
8	RC0562014S0037	ACB, Bhubaneswar	Special Police Establishment 32/2014 Special Police Establishment 32/2014 (B)	Special CJM, Bhubaneswar
9	RC0562014S0038	ACB, Bhubaneswar	Special Police Establishment 33/2014	Special CJM, Bhubaneswar
10	RC0562014S0040	ACB, Bhubaneswar	Special Police Establishment 35/2014	Special CJM, Bhubaneswar
11	RC0562014S0042	ACB, Bhubaneswar	Special Police Establishment 37/2014	Special CJM, Bhubaneswar
12	RC0562014S0046	ACB, Bhubaneswar	Special Police Establishment 41/2014	Special CJM, Bhubaneswar
13	RC0562014S0047	ACB, Bhubaneswar	Special Police Establishment 42/2014 Trial 02/2017	Special CJM, Bhubaneswar Special Judge, CBI, Bhubaneswar

14	RC0562014S0049	ACB, Bhubaneswar	Trial 05/2018	Special Judge, CBI, Bhubaneswar
15	RC0562014S0050	ACB, Bhubaneswar	Trial 01/2018	Special Judge, CBI, Bhubaneswar
16	RC0151994S0052	ACB, Bhubaneswar	Special Police Establishment 32/1994	Special CJM, Bhubaneswar
17	RC0151998S0013	ACB, Bhubaneswar	Special Police Establishment 04/1998	Special CJM, Bhubaneswar
18	RC0152001S0017	ACB, Bhubaneswar	Special Police Establishment 10/2003	Special CJM, Bhubaneswar
19	RC0562014S0013	ACB, Bhubaneswar	Special Police Establishment 08/2014	Special CJM, Bhubaneswar
20	RC0562014S0028	ACB, Bhubaneswar	Special Police Establishment 23/2014	Special CJM, Bhubaneswar

[F. No. 225/06/2024-AVD-II]

KUNDAN NATH, Under Secy.

शुद्धिपत्र

नई दिल्ली, 14 मई, 2024

का.आ. 1160.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र (साप्ताहिक) भाग II, खंड 3, उपखंड (ii), तारीख 1 जुलाई, 2023 में प्रकाशित भारत सरकार की अधिसूचना संख्याक का.आ. 1050, तारीख 13 जनवरी, 2023 में निम्नलिखित संशोधन करती है, अर्थात्:-

उक्त अधिसूचना की तालिका में, क्र.सं. 9 से 14 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्र.सं. और प्रविष्टियां रखी जाएंगी, अर्थात्:-

सारणी

क्र. सं.	सीबीआई मामला आरसी संख्या
(1)	(2)
9.	आरसी.5(ए)/2018-एसीयू-V,एसी-II, नई दिल्ली
10.	आरसी.6(ए)/2018-एसीयू-V,एसी-II, नई दिल्ली
11.	आरसी.7(ए)/2018-एसीयू-V,एसी-II, नई दिल्ली
12.	आरसी.8(ए)/2018-एसीयू-V,एसी-II, नई दिल्ली
13.	आरसी.9(ए)/2018-एसीयू-V,एसी-II, नई दिल्ली
14.	आरसी.10(ए)/2018-एसीयू-V,एसी-II, नई दिल्ली

[फा. सं. 225/13/2022-एवीडी-II]

कुंदन नाथ, अवर सचिव

CORRIGENDUM

New Delhi, the 14th May, 2024

S.O. 1160.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby makes the following amendment in the notification of the Government of India number S.O. 1050, dated the 13th January, 2023 published in the Gazette of India (Weekly), Part II, Section 3, Sub-section (ii), dated 1st July, 2023, namely:-

In the said Notification in the Table, for serial numbers 9 to 14 and the entries relating thereto, the following serial numbers and entries shall be substituted, namely:-

TABLE

Sl. No.	CBI Case RC No.
(1)	(2)
9	RC.5(A)/**2018**-ACU-V, AC-II, New Delhi.
10	RC.6(A)/**2018**-ACU-V, AC-II, New Delhi.
11	RC.7(A)/**2018**-ACU-V, AC-II, New Delhi.
12	RC.8(A)/**2018**-ACU-V, AC-II, New Delhi.
13	RC.9(A)/**2018**-ACU-V, AC-II, New Delhi.
14	RC.10(A)/**2018**-ACU-V, AC-II, New Delhi.

[F. No. 225/13/2022-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 17 मई, 2024

का.आ. 1161.—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री देवेन्द्र पाल सिंह, अधिवक्ता को विशेष न्यायाधीश, न्यायालय सीबीआई (भ्रष्टाचार निवारण अधिनियम) (संसद सदस्य/विधान सभा सदस्य मामले) आरएडीसी नई दिल्ली, माननीय दिल्ली उच्च न्यायालय और भारत के माननीय सर्वोच्च न्यायालय में, दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा संस्थित, सीबीआई मामला आरसी 53(ए)/2022/एसीबी/दिल्ली का अभियोजन और विधि द्वारा स्थापित किसी अपील या पुनरीक्षण न्यायालय में इस मामले से उद्भूत होने वाली अपीलें, पुनरीक्षण और/या अन्य मामलों को संचालित करने के लिए तारीख 09.03.2023 से तीन वर्ष की अवधि के लिए या मामले का निपटान होने तक, इनमें से जो भी पहले हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/10/2023-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 17th May, 2024

S.O. 1161.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Davinder Pal Singh, Advocate as Special Public Prosecutor for conducting the prosecution, appeal or other matters arising out of CBI Case No. RC53(A)/2022/ACB/Delhi, instituted by the Delhi Special Police Establishment (Central Bureau of Investigation), in the Court of Special Judge (PC Act) (CBI) (MPs/MLAs Cases), Rouse Avenue District Court, New Delhi, the Hon'ble High Court of Delhi and the Hon'ble Supreme Court of India, for a period of three years with effect from 9th March, 2023 or till disposal of the case, whichever is earlier.

[F. No. 225/10/2023-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 27 मई, 2024

का.आ. 1162.—केन्द्र सरकार, एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान राज्य सरकार की अधिसूचना सं. एफ. 2/8(110)गृह-5/81, दिनांक 04.01.2024, गृह (गृ.-v) विभाग, जयपुर, राजस्थान सरकार के माध्यम से जारी साधारण सम्मति से, श्री चंपा लाल सोनी सुपुत्र श्री बद्री नारायण सोनी द्वारा दिनांक 17.01.2024 को दर्ज कराई गई शिकायत के आधार पर श्री अंकित आस्वाल, निरीक्षक, सीजीएसटी, जयपुर, श्री संदीप पायल,

आईआरएस, सीजीएसटी, जयपुर और रूप लक्ष्मी ज्वेलर्स जयपुर के विरुद्ध भारतीय दण्ड संहिता की धारा 120बी सपठित भ्रष्टाचार निवारण अधिनियम, 1988 (वर्ष 2018 में यथा संशोधित) की धारा 7 के तहत पंजीकृत सीबीआई मामला आरसीजेडीएच 2024ए0001, दिनांक 17.01.2024 से संबद्ध अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा एवं/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से दिनांक 17.01.2024 से) समस्त राजस्थान राज्य में करती है।

[फा. सं. 228/12/2024-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 27th May, 2024

S.O. 1162.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the general consent of the State Government of Rajasthan, issued vide Notification No. F.2/8(110)Home-5/81 dated 04.01.2024, Home (Group-V) Department, Jaipur, Rajasthan Government, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 17.01.2024) to the whole State of Rajasthan for investigation into the offence(s) of CBI case RCJDH2024A0001 dated 17.01.2024 u/s 120B of IPC r/w Section 7 of PC Act, 1988 (as amended in 2018) against Shri Ankit Aswal, Inspector, CGST, Jaipur, Shri Sandeep Payal, IRS, CGST, Jaipur and Rup Laxmi Jewellers Jaipur registered on the basis of the complaint dated 17.01.2024 lodged by Shri Champa Lal Soni S/o Shri Badri Narayan Soni and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/12/2024-AVD-II]

KUNDAN NATH, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 11 जून, 2024

का.आ. 1163.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह –श्रम न्यायालय**, लखनऊ के पंचाट (**पहचान संख्या 62/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **03/06/2024** को प्राप्त हुआ था।

[सं. एल-22013/01/2024-आई.आर.(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 11th June, 2024

S.O. 1163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 62/2020*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 03***/06/2024.***

[No. L-22013/01/2024 – IR (CM-II)

MANIKANDAN. N , Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 62/2020

Ref. No.-D-850/AB/2020/39/IR/DDN

Rajiv Kumar Yadav V/s FCI

BETWEEN

Sri Rajiv Kumar Yadav

S/o Sri Badam Singh

Village- Mohalla- Chaukhanda, PS and PO- Shamsabad, District- Farrukhabad (UP)

…….Workman

AND

1. The General Manager (Principal Employer)
   Food Corporation of India, '
   Regional office, T.C. 3, V- Vibhuti Khand, Gomti Nagar, Lucknow (U.P.)
2. The Regional Manager (Appointing Authority),
   Food Corporation of India (FCI)
   District Office, Shahjahanpur (U.P.)
3. Sri Rajendra Saxena (Representative
   M/s Keshav Singh Ors. T.P. No. 315, Katia Tolla,
   Shahajanpur (U.P.).

……. Respondent

AWARD

By order/letter dated 9th September 2020 appropriate government referred in following dispute to this Tribunal.

"Whether the termination of the services of Sri Rajiv Kumar Yadav S/o Sri Badam Singh, who was engaged in Roja depot of FCI, Shahajanpur, (U.P.) by M/s Keshav Singh, contractor of FCI, for the period 03.08.2008 to 23.04.2010 is proper and justified.

If not, to what relief, the workman is entitled to?"

Accordingly I.D. case registered before this Tribunal.

Claimant filed statement of claim supported by an affidavit dated 21.12.2020 and the relevant facts stated by the clamant in its claim petition are as under:-

That in District Shahajanpur U.P. there is institution of the name of Bhartiya Khadya Nigam (hereinafter referred as employees)

On 23.04.2010 claimant was appointed in institution and since then he was working and discharging his duties regularly however on 24.04.2020 his services were retrenched without the provisions as provided under section 25(F) of the Act.

Aggrieved by the said facts claimant approach appropriate authority for redressal of his grievances when no heed was paid then for redressal of grievances application for conciliation under Industrial Dispute Act, 1946(hereinafter referred to as "Act") thereafter the reference dated 09.09.2020 was made to this Tribunal.

In the claim statement filed by claimant against order of termination/ retrenchment, claimant prayed that said order of termination/retrenchment may be set aside and he may be reinstated in services with all consequential benefits.

On behalf of respondent a written statement filed on 10.02.2023 in which a preliminary objection taken relevant portion quoted as under:-

"The relevant provisions governing the payment of contract labours engaged by the contractor under Contract Labour (Regulation and Abolition) Act, 1970. is being reproduced below:

Section 21-Responsibility for payment of wages

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract Labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor".

The claimant has nowhere alleged the failure of contractor. The principal employer will come in picture only when the contractor fails to make the payment to the labour engaged by him.

6. It is submitted that the Hon'ble High Court of Allahabad vide its judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India and another Versus Deputy Chief Labour Commissioner and 2 others has set aside the order dated 09.07.21 passed by Deputy Chief Labour Commissioner under Rule 25 (2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971 with the following observation.

"The Court is of the view that the order dated 9.7.2021 cannot be sustained in the eyes of law and, therefore, deserves to be quashed. A bare reading of Rule 25(2)(v)(a) & (b) of the Contract Labour (Regulation and Abolition) Rules, 1971, definitely makes it clear that if any demand had to be made then it had to be made to the effect that the contractor had to pay the salary to its workers which ought to have been at par with the salary of the workers of the principal employer.

The contractor was such a person whose service was taken by the principal employer so that the contractor could make available the labour which was required by the principal employer. If the contractor despite any order being made under Rule 25(2)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, did not pay wages as per the order passed under Rule 25(2)(v)(a)(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, then the principal employer could be made liable to pay the wages and the expenses which would have been incurred by the principal employer in providing amenities could have been taken by the principal employer from the contractor either by the deduction from any amount which was payable to the contractor or the amount paid by the principal employer would have become a debt payable by the contractor. Definitely, no order could have been passed directly asking the principal employer i.e. the petitioner for making the payment to the workmen who were employed by the contractor. Since the contractor himself had not been made a party in the proceedings before the Deputy Chief Labour Commissioner (Central), definitely no direction could be used to the contractor and, therefore, the direction which has been issued to the principal employer could not have also been issued at all."

Further, the Court finds that there were various issues which had to be thrashed out before any order could be passed and a vague order could not have been passed directing the petitioner to ascertain as to who was working and who was not working.

The Court also holds that some the Appellate Authority was the Deputy Chief Labour Commissioner (Central) and the order was also passed by the Deputy Chief Labour Commissioner, no Appeal would lie

With these observations, the writ petition stands allowed. The order ,dated: 9.7.2021 passed by the Deputy Chief Labour Commissioner (Central) is quashed. The recovery etc. which might have been issued in pursuance of the order dated 9.7.2021 also stands quashed"

A copy of the judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India & another versus Deputy Chief Labour Commissioner and 2 others pronounced by the Hon'ble Court of Allahabad vide is hereby filed as annexure 'E'. 7. That it is submitted that after the issue of notification dated 21.04.2010 by the Government of India, Ministry of labour New Delhi regarding prohibition of employment of Contractor Labour so many unions are claiming that contract Labour employed by the ex-contractor are their members and may be regularized in the employment of Food Corporation of India. There are various cases pending before different judicial forums and before the conciliating authorities such as RLC, Kanpur, Dy. CLC, Kanpur, CGIT, New Delhi / Lucknow/ Kanpur, Hon'ble High Court of Allahabad Lucknow and Hon'ble Supreme Court of India.

Details of which are as under :-

➢ID Case No. 157 of 2012 and 112 of 2020 pending before CGIT Delhi. ➢ID Case No. 19 to 77 of 2020 pending before CGIT Lucknow 59 cases.

Three cases 36 of 2016, 66 of 2015 & 03 of 2021 are pending before CGIT Kanpur.

Total 98 Writ petitions have been filed before Hon'ble Allahabad High Court. Out of which 75 Writ petitions had been disposed off dismissed for approaching appropriate authority for seeking regularization at FSD Roza.

Total 14 Writ petitions were filed before Hon'ble Allahabad High Court Lucknow Bench.

Special appeal number 126 of 2020 was filed by FCI before High Court Lucknow & still pending.

8. That Shri Sawan Kumar Nishad and 34 others have filed a Writ Petition No. 4337 of 2021 before the Hon'ble High Court, Allahabad claiming the issuance of the prerogative writ for their absorption in the Food Corporation of India as per Notification no. 23.04.2010. But the Hon'ble High Court dismissed the Writ Petition vide order dated 25.08.2021 on basis of judgment of the Constitutional Bench of the Hon'ble Supreme Court of India passed in Steel Authority of India Limited and others vs. National Union water front workers & others (2001) 7 SSC1, holding that the relief as claimed cannot be countenanced. Following which series of writ petitions were dismissed on this line by Hon'ble High Court of Allahabad.

Accordingly it has been prayed that preliminary objection taken on behalf of respondent may kindly be decided thereafter time was granted to the claimant to file rejoinder affidavit on 26.04.2023, quoted herein below:-

Matter taken up in revised list.

Sri Dhirendra Singh for FCI.

None for worker.

WS filed, taken on record.

Copy be sent to worker along with notice.

List on 24.08.2023 for rejoinder.

On 24.08.2023 an order was passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for FCI.

None for worker.

Last opportunity is granted for rejoinder.

List on 01.12.2023.

On 01.12.2023 an order passed quoted herein below:

Taken up in revised list.

Sri Dhirendra Singh for FCI.

None for claimant.

Further last opportunity is granted for rejoinder, failing which case shall proceed ex-parte against claimant.

List on 21.02.2024. Notice to claimant.

On 21.01.2024 an order passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for OP. None for claimant.

File reserved for orders.

Accordingly after hearing learned counsel for respondent and going through record as till date no rejoinder affidavit has been filed by claimant, so taking into consideration the said facts and the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

As the workman/claimant has filed any statement of claim, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

Date 11.3.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 11 जून, 2024

का.आ. 1164.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय**, लखनऊ के पंचाट (**पहचान संख्या 63/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **03/06/2024** को प्राप्त हुआ था।

[सं. एल-22013/01/2024-आई.आर.(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 11th June, 2024

S.O. 1164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 63/2020***)* of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 03***/06/2024***.

[No. L-22013/01/2024 – IR (CM-II)

MANIKANDAN. N , Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 63/2020

Ref. No.-D-851/AB/2020/40/IR/DDN

Mansharam V/s FCI

BETWEEN

Sri Mansharam,
S/o Sri Devi Prasad
Village- Shekharpur, PS and PO- Bharkhera, Tehsil- Bisalpur, District Piliphit

Workman

AND

1. The General Manager (Principal Employer)

   Food Corporation of India, ‘

   Regional office, T.C. 3, V- Vibhuti Khand, Gomti Nagar, Lucknow (U.P.)

2. The Regional Manager (Appointing Authority),

   Food Corporation of India (FCI)

   District Office, Shahjahanpur (U.P.)

3. Sri Rajendra Saxena (Representative

   M/s Keshav Singh Ors. T.P. No. 315, Katia Tolla,

   Shahajanpur (U.P.).

……. Respondent

AWARD

By order/letter dated 9th September 2020 appropriate government referred in following dispute to this Tribunal.

“Whether the termination of the services of Sri Mansharam S/o Sri Devi Prasad, who was engaged in Roja depot of FCI, Shahajanpur, (U.P.) by M/s Keshav Singh, contractor of FCI, for the period 08.07.2008 to 23.04.2010 is proper and justified.

If not, to what relief, the workman is entitled to?”

Accordingly I.D. case registered before this Tribunal.

Claimant filed statement of claim supported by an affidavit dated 21.12.2020 and the relevant facts stated by the clamant in its claim petition are as under:-

That in District Shahajanpur U.P. there is institution of the name of Bhartiya Khadya Nigam (hereinafter referred as employees)

On 23.04.2010 claimant was appointed in institution and since then he was working and discharging his duties regularly however on 24.04.2020 his services were retrenched without the provisions as provided under section 25(F) of the Act.

Aggrieved by the said facts claimant approach appropriate authority for redressal of his grievances when no heed was paid then for redressal of grievances application for conciliation under Industrial Dispute Act, 1946(hereinafter referred to as “Act”) thereafter the reference dated 09.09.2020 was made to this Tribunal.

In the claim statement filed by claimant against order of termination/ retrenchment, claimant prayed that said order of termination/retrenchment may be set aside and he may be reinstated in services with all consequential benefits.

On behalf of respondent a written statement filed on 10.02.2023 in which a preliminary objection taken relevant portion quoted as under:-

“The relevant provisions governing the payment of contract labours engaged by the contractor under Contract Labour (Regulation and Abolition) Act, 1970. is being reproduced below:

Section 21-Responsibility for payment of wages

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract Labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor”.

The claimant has nowhere alleged the failure of contractor. The principal employer will come in picture only when the contractor fails to make the payment to the labour engaged by him.

6. It is submitted that the Hon'ble High Court of Allahabad vide its judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India and another Versus Deputy Chief Labour Commissioner and 2 others has set aside the order dated 09.07.21 passed by Deputy Chief Labour Commissioner under Rule 25 (2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971 with the following observation.

"The Court is of the view that the order dated 9.7.2021 cannot be sustained in the eyes of law and, therefore, deserves to be quashed. A bare reading of Rule 25(2)(v)(a) & (b) of the Contract Labour (Regulation and Abolition) Rules, 1971, definitely makes it clear that if any demand had to be made then it had to be made to the effect that the contractor had to pay the salary to its workers which ought to have been at par with the salary of the workers of the principal employer.

The contractor was such a person whose service was taken by the principal employer so that the contractor could make available the labour which was required by the principal employer. If the contractor despite any order being made under Rule 25(2)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, did not pay wages as per the order passed under Rule 25(2)(v)(a)(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, then the principal employer could be made liable to pay the wages and the expenses which would have been incurred by the principal employer in providing amenities could have been taken by the principal employer from the contractor either by the deduction from any amount which was payable to the contractor or the amount paid by the principal employer would have become a debt payable by the contractor. Definitely, no order could have been passed directly asking the principal employer i.e. the petitioner for making the payment to the workmen who were employed by the contractor. Since the contractor himself had not been made a party in the proceedings before the Deputy Chief Labour Commissioner (Central), definitely no direction could be used to the contractor and, therefore, the direction which has been issued to the principal employer could not have also been issued at all."

Further, the Court finds that there were various issues which had to be thrashed out before any order could be passed and a vague order could not have been passed directing the petitioner to ascertain as to who was working and who was not working.

The Court also holds that some the Appellate Authority was the Deputy Chief Labour Commissioner (Central) and the order was also passed by the Deputy Chief Labour Commissioner, no Appeal would lie

With these observations, the writ petition stands allowed. The order ,dated: 9.7.2021 passed by the Deputy Chief Labour Commissioner (Central) is quashed. The recovery etc. which might have been issued in pursuance of the order dated 9.7.2021 also stands quashed"

A copy of the judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India & another versus Deputy Chief Labour Commissioner and 2 others pronounced by the Hon'ble Court of Allahabad vide is hereby filed as annexure 'E'. 7. That it is submitted that after the issue of notification dated 21.04.2010 by the Government of India, Ministry of labour New Delhi regarding prohibition of employment of Contractor Labour so many unions are claiming that contract Labour employed by the ex-contractor are their members and may be regularized in the employment of Food Corporation of India. There are various cases pending before different judicial forums and before the conciliating authorities such as RLC, Kanpur, Dy. CLC, Kanpur, CGIT, New Delhi / Lucknow/ Kanpur, Hon'ble High Court of Allahabad Lucknow and Hon'ble Supreme Court of India.

Details of which are as under :-

➢ID Case No. 157 of 2012 and 112 of 2020 pending before CGIT Delhi. ➢ID Case No. 19 to 77 of 2020 pending before CGIT Lucknow 59 cases.

Three cases 36 of 2016, 66 of 2015 & 03 of 2021 are pending before CGIT Kanpur.

Total 98 Writ petitions have been filed before Hon'ble Allahabad High Court. Out of which 75 Writ petitions had been disposed off dismissed for approaching appropriate authority for seeking regularization at FSD Roza.

Total 14 Writ petitions were filed before Hon'ble Allahabad High Court Lucknow Bench.

Special appeal number 126 of 2020 was filed by FCI before High Court Lucknow & still pending.

8. That Shri Sawan Kumar Nishad and 34 others have filed a Writ Petition No. 4337 of 2021 before the Hon'ble High Court, Allahabad claiming the issuance of the prerogative writ for their absorption in the Food Corporation of India as per Notification no. 23.04.2010. But the Hon'ble High Court dismissed the Writ Petition vide order dated 25.08.2021 on basis of judgment of the Constitutional Bench of the Hon'ble

Supreme Court of India passed in Steel Authority of India Limited and others vs. National Union water front workers & others (2001) 7 SSC1, holding that the relief as claimed cannot be countenanced. Following which series of writ petitions were dismissed on this line by Hon'ble High Court of Allahabad.

Accordingly it has been prayed that preliminary objection taken on behalf of respondent may kindly be decided thereafter time was granted to the claimant to file rejoinder affidavit on 26.04.2023, quoted herein below:-

Matter taken up in revised list.

Sri Dhirendra Singh for FCI.

None for worker.

WS filed, taken on record.

Copy be sent to worker along with notice.

List on 24.08.2023 for rejoinder.

On 24.08.2023 an order was passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for FCI.

None for worker.

Last opportunity is granted for rejoinder.

List on 01.12.2023.

On 01.12.2023 an order passed quoted herein below:

Taken up in revised list.

Sri Dhirendra Singh for FCI.

None for claimant.

Further last opportunity is granted for rejoinder, failing which case shall proceed ex-parte against claimant.

List on 21.02.2024. Notice to claimant.

On 21.01.2024 an order passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for OP. None for claimant.

File reserved for orders.

Accordingly after hearing learned counsel for respondent and going through record as till date no rejoinder affidavit has been filed by claimant, so taking into consideration the said facts and the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman/claimant has filed any statement of claim, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

Date 11.3.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 11 जून, 2024

का.आ. 1165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, लखनऊ के पंचाट (**पहचान संख्या 66/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **03/06/2024** को प्राप्त हुआ था।

[सं. एल-22013/01/2024-आई.आर.(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 11th June, 2024

S.O. 1165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 66/2020*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 03***/06/2024.***

[No. L-22013/01/2024 – IR (CM-II)

MANIKANDAN. N , Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 66/2020

Ref. No.-D-854/AB/2020/43/IRDDN

Tejpal V/s FCI

BETWEEN

Sri Tejpal,

S/o Sri Kaliyan Roy

Village- Karnapur, Post and PS- Bharkheda, District Piliphit

…… Workman

AND

1. The General Manager (Principal Employer)
   Food Corporation of India, ‘
   Regional office, T.C. 3, V- Vibhuti Khand, Gomti Nagar, Lucknow (U.P.)

2. The Regional Manager (Appointing Authority),

   Food Corporation of India (FCI)

   District Office, Shahjahanpur (U.P.)

3. Sri Rajendra Saxena (Representative

   M/s Keshav Singh Ors. T.P. No. 315, Katia Tolla,

   Shahajanpur (U.P.).

……. Respondent

Award

By order/letter dated 9th September 2020 appropriate government referred in following dispute to this Tribunal.

"Whether the termination of the services of Sri Tejpal S/o Sri Kaliyan Roy, who was engaged in Roja depot of FCI, Shahajanpur, (U.P.) by M/s Keshav Singh, contractor of FCI, for the period 07.08.2008 to 23.04.2010 is proper and justified.

If not, to what relief, the workman is entitled to?"

Accordingly I.D. case registered before this Tribunal.

Claimant filed statement of claim supported by an affidavit dated 21.12.2020 and the relevant facts stated by the clamant in its claim petition are as under:-

That in District Shahajanpur U.P. there is institution of the name of Bhartiya Khadya Nigam (hereinafter referred as employees)

On 23.04.2010 claimant was appointed in institution and since then he was working and discharging his duties regularly however on 24.04.2020 his services were retrenched without the provisions as provided under section 25(F) of the Act.

Aggrieved by the said facts claimant approach appropriate authority for redressal of his grievances when no heed was paid then for redressal of grievances application for conciliation under Industrial Dispute Act, 1946(hereinafter referred to as "Act") thereafter the reference dated 09.09.2020 was made to this Tribunal.

In the claim statement filed by claimant against order of termination/ retrenchment, claimant prayed that said order of termination/retrenchment may be set aside and he may be reinstated in services with all consequential benefits.

On behalf of respondent a written statement filed on 10.02.2023 in which a preliminary objection taken relevant portion quoted as under:-

"The relevant provisions governing the payment of contract labours engaged by the contractor under Contract Labour (Regulation and Abolition) Act, 1970. is being reproduced below:

Section 21-Responsibility for payment of wages

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract Labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor".

The claimant has nowhere alleged the failure of contractor. The principal employer will come in picture only when the contractor fails to make the payment to the labour engaged by him.

6. It is submitted that the Hon'ble High Court of Allahabad vide its judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India and another Versus Deputy Chief Labour Commissioner and 2 others has set aside the order dated 09.07.21 passed by Deputy Chief Labour

Commissioner under Rule 25 (2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971 with the following observation.

"The Court is of the view that the order dated 9.7.2021 cannot be sustained in the eyes of law and, therefore, deserves to be quashed. A bare reading of Rule 25(2)(v)(a) & (b) of the Contract Labour (Regulation and Abolition) Rules, 1971, definitely makes it clear that if any demand had to be made then it had to be made to the effect that the contractor had to pay the salary to its workers which ought to have been at par with the salary of the workers of the principal employer.

The contractor was such a person whose service was taken by the principal employer so that the contractor could make available the labour which was required by the principal employer. If the contractor despite any order being made under Rule 25(2)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, did not pay wages as per the order passed under Rule 25(2)(v)(a)(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, then the principal employer could be made liable to pay the wages and the expenses which would have been incurred by the principal employer in providing amenities could have been taken by the principal employer from the contractor either by the deduction from any amount which was payable to the contractor or the amount paid by the principal employer would have become a debt payable by the contractor. Definitely, no order could have been passed directly asking the principal employer i.e. the petitioner for making the payment to the workmen who were employed by the contractor. Since the contractor himself had not been made a party in the proceedings before the Deputy Chief Labour Commissioner (Central), definitely no direction could be used to the contractor and, therefore, the direction which has been issued to the principal employer could not have also been issued at all."

Further, the Court finds that there were various issues which had to be thrashed out before any order could be passed and a vague order could not have been passed directing the petitioner to ascertain as to who was working and who was not working.

The Court also holds that some the Appellate Authority was the Deputy Chief Labour Commissioner (Central) and the order was also passed by the Deputy Chief Labour Commissioner, no Appeal would lie

With these observations, the writ petition stands allowed. The order ,dated: 9.7.2021 passed by the Deputy Chief Labour Commissioner (Central) is quashed. The recovery etc. which might have been issued in pursuance of the order dated 9.7.2021 also stands quashed"

A copy of the judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India & another versus Deputy Chief Labour Commissioner and 2 others pronounced by the Hon'ble Court of Allahabad vide is hereby filed as annexure 'E'. 7. That it is submitted that after the issue of notification dated 21.04.2010 by the Government of India, Ministry of labour New Delhi regarding prohibition of employment of Contractor Labour so many unions are claiming that contract Labour employed by the ex-contractor are their members and may be regularized in the employment of Food Corporation of India. There are various cases pending before different judicial forums and before the conciliating authorities such as RLC, Kanpur, Dy. CLC, Kanpur, CGIT, New Delhi / Lucknow/ Kanpur, Hon'ble High Court of Allahabad Lucknow and Hon'ble Supreme Court of India.

Details of which are as under :-

➢ID Case No. 157 of 2012 and 112 of 2020 pending before CGIT Delhi. ➢ID Case No. 19 to 77 of 2020 pending before CGIT Lucknow 59 cases.

Three cases 36 of 2016, 66 of 2015 & 03 of 2021 are pending before CGIT Kanpur.

Total 98 Writ petitions have been filed before Hon'ble Allahabad High Court. Out of which 75 Writ petitions had been disposed off dismissed for approaching appropriate authority for seeking regularization at FSD Roza.

Total 14 Writ petitions were filed before Hon'ble Allahabad High Court Lucknow Bench.

Special appeal number 126 of 2020 was filed by FCI before High Court Lucknow & still pending.

8. That Shri Sawan Kumar Nishad and 34 others have filed a Writ Petition No. 4337 of 2021 before the Hon'ble High Court, Allahabad claiming the issuance of the prerogative writ for their absorption in the Food Corporation of India as per Notification no. 23.04.2010. But the Hon'ble High Court dismissed the Writ Petition vide order dated 25.08.2021 on basis of judgment of the Constitutional Bench of the Hon'ble Supreme Court of India passed in Steel Authority of India Limited and others vs. National Union water front workers & others (2001) 7 SSC1, holding that the relief as claimed cannot be countenanced. Following which series of writ petitions were dismissed on this line by Hon'ble High Court of Allahabad.

Accordingly it has been prayed that preliminary objection taken on behalf of respondent may kindly be decided thereafter time was granted to the claimant to file rejoinder affidavit on 26.04.2023, quoted herein below:-

Matter taken up in revised list.

Sri Dhirendra Singh for FCI.

None for worker.

WS filed, taken on record.

Copy be sent to worker along with notice.

List on 24.08.2023 for rejoinder.

On 24.08.2023 an order was passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for FCI.

None for worker.

Last opportunity is granted for rejoinder.

List on 01.12.2023.

On 01.12.2023 an order passed quoted herein below:

Taken up in revised list.

Sri Dhirendra Singh for FCI.

None for claimant.

Further last opportunity is granted for rejoinder, failing which case shall proceed ex-parte against claimant.

List on 21.02.2024. Notice to claimant.

On 21.01.2024 an order passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for OP. None for claimant.

File reserved for orders.

Accordingly after hearing learned counsel for respondent and going through record as till date no rejoinder affidavit has been filed by claimant, so taking into consideration the said facts and the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed.*

A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

As the workman/claimant has filed any statement of claim, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

Date 11.3.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 11 जून, 2024

का.आ. 1166.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय**, लखनऊ के पंचाट (पहचान **संख्या 67/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **03/06/2024** को प्राप्त हुआ था।

[सं. एल-22013/01/2024-आई.आर.(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 11th May, 2024

S.O. 1166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 67/2020*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 03***/06/2024.***

[No. L-22013/01/2024 – IR (CM-II)

MANIKANDAN. N , Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 67/2020

Ref. No.-D-855/AB/2020/44/IRDDN

Shyam Lal V/s FCI

BETWEEN

Sri Shyam Lal

S/o Sri Meva Ram,

Village- Naugava Bhagwantpur, Post- Rukampur, PS- Kyoladya, Tehsil- Nawabganj, District Bareilly (U.P.)

…… Workman

AND

1. The General Manager (Principal Employer)
   Food Corporation of India, '
   Regional office, T.C. 3, V- Vibhuti Khand, Gomti Nagar, Lucknow (U.P.)
2. The Regional Manager (Appointing Authority),
   Food Corporation of India (FCI)
   District Office, Shahjahanpur (U.P.)

3. Sri Rajendra Saxena (Representative

M/s Keshav Singh Ors. T.P. No. 315, Katia Tolla,

Shahajanpur (U.P.).

……. Respondent

AWARD

By order/letter dated 9th September 2020 appropriate government referred in following dispute to this Tribunal.

"Whether the termination of the services of Sri Shyam Lal S/o Sri Mewa Ram, who was engaged in Roja depot of FCI, Shahajanpur, (U.P.) by M/s Keshav Singh, contractor of FCI, for the period 07.08.2008 to 23.04.2010 is proper and justified.

If not, to what relief, the workman is entitled to?"

Accordingly I.D. case registered before this Tribunal.

Claimant filed statement of claim supported by an affidavit dated 21.12.2020 and the relevant facts stated by the clamant in its claim petition are as under:-

That in District Shahajanpur U.P. there is institution of the name of Bhartiya Khadya Nigam (hereinafter referred as employees)

On 23.04.2010 claimant was appointed in institution and since then he was working and discharging his duties regularly however on 24.04.2020 his services were retrenched without the provisions as provided under section 25(F) of the Act.

Aggrieved by the said facts claimant approach appropriate authority for redressal of his grievances when no heed was paid then for redressal of grievances application for conciliation under Industrial Dispute Act, 1946(hereinafter referred to as "Act") thereafter the reference dated 09.09.2020 was made to this Tribunal.

In the claim statement filed by claimant against order of termination/ retrenchment, claimant prayed that said order of termination/retrenchment may be set aside and he may be reinstated in services with all consequential benefits.

On behalf of respondent a written statement filed on 10.02.2023 in which a preliminary objection taken relevant portion quoted as under:-

"The relevant provisions governing the payment of contract labours engaged by the contractor under Contract Labour (Regulation and Abolition) Act, 1970. is being reproduced below:

Section 21-Responsibility for payment of wages

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract Labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor".

The claimant has nowhere alleged the failure of contractor. The principal employer will come in picture only when the contractor fails to make the payment to the labour engaged by him.

6. It is submitted that the Hon'ble High Court of Allahabad vide its judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India and another Versus Deputy Chief Labour Commissioner and 2 others has set aside the order dated 09.07.21 passed by Deputy Chief Labour Commissioner under Rule 25 (2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971 with the following observation.

"The Court is of the view that the order dated 9.7.2021 cannot be sustained in the eyes of law and, therefore, deserves to be quashed. A bare reading of Rule 25(2)(v)(a) & (b) of the Contract Labour (Regulation and Abolition) Rules, 1971, definitely makes it clear that if any demand had to be made then it had to be made to the effect that the contractor had to pay the salary to its workers which ought to have been at par with the salary of the workers of the principal employer.

The contractor was such a person whose service was taken by the principal employer so that the contractor could make available the labour which was required by the principal employer. If the contractor despite any order being made under Rule 25(2)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, did not pay wages as per the order passed under Rule 25(2)(v)(a)(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, then the principal employer could be made liable to pay the wages and the expenses which would have been incurred by the principal employer in providing amenities could have been taken by the principal employer from the contractor either by the deduction from any amount which was payable to the contractor or the amount paid by the principal employer would have become a debt payable by the contractor. Definitely, no order could have been passed directly asking the principal employer i.e. the petitioner for making the payment to the workmen who were employed by the contractor. Since the contractor himself had not been made a party in the proceedings before the Deputy Chief Labour Commissioner (Central), definitely no direction could be used to the contractor and, therefore, the direction which has been issued to the principal employer could not have also been issued at all."

Further, the Court finds that there were various issues which had to be thrashed out before any order could be passed and a vague order could not have been passed directing the petitioner to ascertain as to who was working and who was not working.

The Court also holds that some the Appellate Authority was the Deputy Chief Labour Commissioner (Central) and the order was also passed by the Deputy Chief Labour Commissioner, no Appeal would lie

With these observations, the writ petition stands allowed. The order ,dated: 9.7.2021 passed by the Deputy Chief Labour Commissioner (Central) is quashed. The recovery etc. which might have been issued in pursuance of the order dated 9.7.2021 also stands quashed"

A copy of the judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India & another versus Deputy Chief Labour Commissioner and 2 others pronounced by the Hon'ble Court of Allahabad vide is hereby filed as annexure 'E'. 7. That it is submitted that after the issue of notification dated 21.04.2010 by the Government of India, Ministry of labour New Delhi regarding prohibition of employment of Contractor Labour so many unions are claiming that contract Labour employed by the ex-contractor are their members and may be regularized in the employment of Food Corporation of India. There are various cases pending before different judicial forums and before the conciliating authorities such as RLC, Kanpur, Dy. CLC, Kanpur, CGIT, New Delhi / Lucknow/ Kanpur, Hon'ble High Court of Allahabad Lucknow and Hon'ble Supreme Court of India.

Details of which are as under :-

➢ID Case No. 157 of 2012 and 112 of 2020 pending before CGIT Delhi. ➢ID Case No. 19 to 77 of 2020 pending before CGIT Lucknow 59 cases.

Three cases 36 of 2016, 66 of 2015 & 03 of 2021 are pending before CGIT Kanpur.

Total 98 Writ petitions have been filed before Hon'ble Allahabad High Court. Out of which 75 Writ petitions had been disposed off dismissed for approaching appropriate authority for seeking regularization at FSD Roza.

Total 14 Writ petitions were filed before Hon'ble Allahabad High Court Lucknow Bench.

Special appeal number 126 of 2020 was filed by FCI before High Court Lucknow & still pending.

8. That Shri Sawan Kumar Nishad and 34 others have filed a Writ Petition No. 4337 of 2021 before the Hon'ble High Court, Allahabad claiming the issuance of the prerogative writ for their absorption in the Food Corporation of India as per Notification no. 23.04.2010. But the Hon'ble High Court dismissed the Writ Petition vide order dated 25.08.2021 on basis of judgment of the Constitutional Bench of the Hon'ble Supreme Court of India passed in Steel Authority of India Limited and others vs. National Union water front workers & others (2001) 7 SSC1, holding that the relief as claimed cannot be countenanced. Following which series of writ petitions were dismissed on this line by Hon'ble High Court of Allahabad.

Accordingly it has been prayed that preliminary objection taken on behalf of respondent may kindly be decided thereafter time was granted to the claimant to file rejoinder affidavit on 26.04.2023, quoted herein below:-

Matter taken up in revised list.

Sri Dhirendra Singh for FCI.

None for worker.

WS filed, taken on record.

Copy be sent to worker along with notice.

List on 24.08.2023 for rejoinder.

On 24.08.2023 an order was passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for FCI.

None for worker.

Last opportunity is granted for rejoinder.

List on 01.12.2023.

On 01.12.2023 an order passed quoted herein below:

Taken up in revised list.

Sri Dhirendra Singh for FCI.

None for claimant.

Further last opportunity is granted for rejoinder, failing which case shall proceed ex-parte against claimant.

List on 21.02.2024. Notice to claimant.

On 21.01.2024 an order passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for OP. None for claimant.

File reserved for orders.

Accordingly after hearing learned counsel for respondent and going through record as till date no rejoinder affidavit has been filed by claimant, so taking into consideration the said facts and the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed.*

A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

As the workman/claimant has filed any statement of claim, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

Date 11.3.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 11 जून, 2024

का.आ. 1167—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण– सह श्रम न्यायालय**, लखनऊ के पंचाट (पहचान **संख्या 61/2020)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **03/06/2024** को प्राप्त हुआ था।

[सं. एल- 22013/01/2024–आई.आर. (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 11th June, 2024

S.O. 1167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 61/2020*)* of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 03***/06/2024.***

[No. L-22013/01/2024 – IR (CM-II]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW
PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 61/2020

Ref. No.-D-846/AB/2020/38/IRDDN

Suresh Chandra V/s FCI

BETWEEN

Sri Suresh Chandra,
S/o Sri Devi Deen
Village- Bhavda, PO- Virampur, Tehsil- Mitauli, PS- Maigalganj- District Lakhimpur-Kheri (UP)

…… Workman

AND

1. The General Manager (Principal Employer)
   Food Corporation of India, '
   Regional office, T.C. 3, V- Vibhuti Khand, Gomti Nagar, Lucknow (U.P.)
2. The Regional Manager (Appointing Authority),
   Food Corporation of India (FCI)
   District Office, Shahjahanpur (U.P.)

3. Sri Rajendra Saxena (Representative
M/s Keshav Singh Ors. T.P. No. 315, Katia Tolla,
Shahajanpur (U.P.).

……. Respondent

AWARD

By order/letter dated 9th September 2020 appropriate government referred in following dispute to this Tribunal.

"Whether the termination of the services of Suresh Chandra,

S/o Sri Devi Deen*, who was engaged in Roja depot of FCI, Shahajanpur, (U.P.) by M/s Keshav Singh, contractor of FCI, for the period 07.08.2008 to 23.04.2010 is proper and justified.*

If not, to what relief, the workman is entitled to?"

Accordingly I.D. case registered before this Tribunal.

Claimant filed statement of claim supported by an affidavit dated 21.12.2020 and the relevant facts stated by the clamant in its claim petition are as under:-

That in District Shahajanpur U.P. there is institution of the name of Bhartiya Khadya Nigam (hereinafter referred as employees)

On 23.04.2010 claimant was appointed in institution and since then he was working and discharging his duties regularly however on 24.04.2020 his services were retrenched without the provisions as provided under section 25(F) of the Act.

Aggrieved by the said facts claimant approach appropriate authority for redressal of his grievances when no heed was paid then for redressal of grievances application for conciliation under Industrial Dispute Act, 1946(hereinafter referred to as "Act") thereafter the reference dated 09.09.2020 was made to this Tribunal.

In the claim statement filed by claimant against order of termination/ retrenchment, claimant prayed that said order of termination/retrenchment may be set aside and he may be reinstated in services with all consequential benefits.

On behalf of respondent a written statement filed on 10.02.2023 in which a preliminary objection taken relevant portion quoted as under:-

"The relevant provisions governing the payment of contract labours engaged by the contractor under Contract Labour (Regulation and Abolition) Act, 1970. is being reproduced below:

Section 21-Responsibility for payment of wages

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract Labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor".

The claimant has nowhere alleged the failure of contractor. The principal employer will come in picture only when the contractor fails to make the payment to the labour engaged by him.

6. It is submitted that the Hon'ble High Court of Allahabad vide its judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India and another Versus Deputy Chief Labour Commissioner and 2 others has set aside the order dated 09.07.21 passed by Deputy Chief Labour Commissioner under Rule 25 (2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971 with the following observation.

"The Court is of the view that the order dated 9.7.2021 cannot be sustained in the eyes of law and, therefore, deserves to be quashed. A bare reading of Rule 25(2)(v)(a) & (b) of the Contract Labour (Regulation and Abolition) Rules, 1971, definitely makes it clear that if any demand had to be made then it had to be made to

the effect that the contractor had to pay the salary to its workers which ought to have been at par with the salary of the workers of the principal employer.

The contractor was such a person whose service was taken by the principal employer so that the contractor could make available the labour which was required by the principal employer. If the contractor despite any order being made under Rule 25(2)(a)&(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, did not pay wages as per the order passed under Rule 25(2)(v)(a)(b) of the Contract Labour (Regulation and Abolition) Rules, 1971, then the principal employer could be made liable to pay the wages and the expenses which would have been incurred by the principal employer in providing amenities could have been taken by the principal employer from the contractor either by the deduction from any amount which was payable to the contractor or the amount paid by the principal employer would have become a debt payable by the contractor. Definitely, no order could have been passed directly asking the principal employer i.e. the petitioner for making the payment to the workmen who were employed by the contractor. Since the contractor himself had not been made a party in the proceedings before the Deputy Chief Labour Commissioner (Central), definitely no direction could be used to the contractor and, therefore, the direction which has been issued to the principal employer could not have also been issued at all."

Further, the Court finds that there were various issues which had to be thrashed out before any order could be passed and a vague order could not have been passed directing the petitioner to ascertain as to who was working and who was not working.

The Court also holds that some the Appellate Authority was the Deputy Chief Labour Commissioner (Central) and the order was also passed by the Deputy Chief Labour Commissioner, no Appeal would lie

With these observations, the writ petition stands allowed. The order ,dated: 9.7.2021 passed by the Deputy Chief Labour Commissioner (Central) is quashed. The recovery etc. which might have been issued in pursuance of the order dated 9.7.2021 also stands quashed"

A copy of the judgment and order dated 21.12.21 in writ petition C No. 23288 of 2021 titled Food Corporation of India & another versus Deputy Chief Labour Commissioner and 2 others pronounced by the Hon'ble Court of Allahabad vide is hereby filed as annexure 'E'. 7. That it is submitted that after the issue of notification dated 21.04.2010 by the Government of India, Ministry of labour New Delhi regarding prohibition of employment of Contractor Labour so many unions are claiming that contract Labour employed by the ex-contractor are their members and may be regularized in the employment of Food Corporation of India. There are various cases pending before different judicial forums and before the conciliating authorities such as RLC, Kanpur, Dy. CLC, Kanpur, CGIT, New Delhi / Lucknow/ Kanpur, Hon'ble High Court of Allahabad Lucknow and Hon'ble Supreme Court of India.

Details of which are as under :-

➤ID Case No. 157 of 2012 and 112 of 2020 pending before CGIT Delhi. ➤ID Case No. 19 to 77 of 2020 pending before CGIT Lucknow 59 cases.

Three cases 36 of 2016, 66 of 2015 & 03 of 2021 are pending before CGIT Kanpur.

Total 98 Writ petitions have been filed before Hon'ble Allahabad High Court. Out of which 75 Writ petitions had been disposed off dismissed for approaching appropriate authority for seeking regularization at FSD Roza.

Total 14 Writ petitions were filed before Hon'ble Allahabad High Court Lucknow Bench.

Special appeal number 126 of 2020 was filed by FCI before High Court Lucknow & still pending.

8. That Shri Sawan Kumar Nishad and 34 others have filed a Writ Petition No. 4337 of 2021 before the Hon'ble High Court, Allahabad claiming the issuance of the prerogative writ for their absorption in the Food Corporation of India as per Notification no. 23.04.2010. But the Hon'ble High Court dismissed the Writ Petition vide order dated 25.08.2021 on basis of judgment of the Constitutional Bench of the Hon'ble Supreme Court of India passed in Steel Authority of India Limited and others vs. National Union water front workers & others (2001) 7 SSC1, holding that the relief as claimed cannot be countenanced. Following which series of writ petitions were dismissed on this line by Hon'ble High Court of Allahabad.

Accordingly it has been prayed that preliminary objection taken on behalf of respondent may kindly be decided thereafter time was granted to the claimant to file rejoinder affidavit on 26.04.2023, quoted herein below:-

Matter taken up in revised list.
Sri Dhirendra Singh for FCI.
None for worker.
WS filed, taken on record.
Copy be sent to worker along with notice.

List on 24.08.2023 for rejoinder.

On 24.08.2023 an order was passed quoted herein below:

Matter taken up in revised list.
Sri Dhirendra Singh for FCI.
None for worker.

Last opportunity is granted for rejoinder.

List on 01.12.2023.

On 01.12.2023 an order passed quoted herein below:

Taken up in revised list.

Sri Dhirendra Singh for FCI.

None for claimant.

Further last opportunity is granted for rejoinder, failing which case shall proceed ex-parte against claimant.

List on 21.02.2024. Notice to claimant.

On 21.01.2024 an order passed quoted herein below:

Matter taken up in revised list.

Sri Dhirendra Singh for OP. None for claimant.

File reserved for orders.

Accordingly after hearing learned counsel for respondent and going through record as till date no rejoinder affidavit has been filed by claimant, so taking into consideration the said facts and the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman/claimant has filed any statement of claim, so the present case is liable to be dismissed.
For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.
Award as above.

Lucknow. Justice ANIL KUMAR, Presiding Officer

Date 11.3.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1168—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, हैदराबाद के पंचाट (पहचान संख्या **19/2010**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **11/06/2024** को प्राप्त हुआ था।

[सं. एल-22012/51/2009-आई. आर. (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 12th June, 2024

S.O. 1168—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 19/2010)** of t**he Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on 11***/06/2024.***

[No. L-22012/51/2009 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 22nd day of February, 2024

INDUSTRIAL DISPUTE No. 19/2010

Between:

The General Secretary, (Sri Riaz Ahmed)
Singareni Miners & Engineering Workers'
Union (HMS), Qtr.No.C-34, Sector-I,
Godavarikhani, Karimnagar Distt.,
A.P.-505209. ….. Petitioner union

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-III, Centenary Colony,
Godavarikhani, Khammam Dist.,
A.P. – 505214. …. Respondent

Appearances:

For the Petitioner Union : Sri Y. Ranjeeth Reddy, Advocate

For the Respondent: M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

A W A R D

The Government of India, Ministry of Labour by its order No. L - 22012/51/2009-IR(CM-II) dated 31.5.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their Workman. The reference is,

SCHEDULE

"Whether the action of the management of M/s. SCCL for getting reviewed the age of Shri Gaddam Rajaiah voluntarily by the Apex Medical Board on 15.6.2006 is legal and justified? To what relief is the claimant entitled for ?"

The reference is numbered in this Tribunal as I.D. No. 19/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:-

It is submitted that Workman is a member of Singareni Miners and Engineering Workers Union. The Workman was appointed on 12.4.1976. It is submitted that at the time of his appointment, his date of birth was decided as 12.4.1955. The said date of birth was entered in all the statutory service records of the Workman such as, Form-B Register, Service record form '0', CMPF records etc. It is submitted that the age of superannuation of the workmen working in the Singareni Collieries Company Limited is 60 years. As the date of birth of the Workman is 12.4.1955, he is entitled to be continued in service till 30.4.2015. It is submitted that for more than 30 years, all the records of the company clearly established the date of birth of the concerned Workman as 12.4.1955. However, during the year 2005, for the reasons best known to the authorities of the respondent, the Workman was asked to be present before the committee of officers in the respondent's office. Having left with no other alternative, the Workman appeared before the committee, who in turn asked him to go the Area Hospital, Kothagudem. Accordingly, the Workman attended at the Area Hospital of Singareni Collieries Company Ltd., Kothagudem on 15.6.2006, whereat, some signatures were obtained from him and later vide proceedings dated 4/10.8.2006, the Workman was informed that the Apex Medical Board in its meeting dated 15.6.2006, held the age of the Workman as 55 years as on 15.6.2006. As a result of the decision taken by the Apex Medical Board, the Workman would be deprived of nearly 4 years of service. In those circumstances, having left with no other alternative, the Workman approached the respondents. When his personal pleadings did not yield any positive results, he approached the Union to which he was a member. Thereafter, the Union, i.e. M/s Singareni Miners and Engineering Workers Union took up the case and represented the matter to the authorities requesting not to alter the date of birth of the concerned Workman to his detriment. Unfortunately, when the pleadings of the Union did not yield any positive result, having left with no other alternative, the dispute was raised u/s 2K of ID Act. However, the said dispute ended in failure, hence, this reference. It is submitted that admittedly, all the service records of the company which were maintained from the date of initial appointment of the concerned Workman till 2006 clearly and clinchingly establish the date of birth as 12.4.1955. Therefore, in all fairness, the Workman should be continued in service upto end of April, 2015. It is submitted that when the statutory records of Singareni Collieries Company Limited, show the date of birth of the Workman as 12.4.1955, the Apex Medical Board has no jurisdiction or power to alter the date of birth of the Workman, thereby depriving him of nearly 4 years of service. As a matter of fact, the Apex Medical Board has no legal status or statutory force to modify the date of birth of the Workman and also the rule contemplates that age or date of birth entered at the time of initial appointment cannot be altered, that too, by the employer suo moto. It is submitted that the Singareni Collieries Company Limited is an instrumentality of the State under Article 12 of the Constitution of India and respondent is its authority. As such, the respondent is expected to act more reasonably, fairly and justifiably in nature. In a catena of judgments, the Hon'ble Supreme Court as well as the High Court of AP deprecated such an arbitrary action of the respondent to arrive at the date of birth of employees to their detriment. It is submitted that the date of birth of the concerned Workman was entered as 12.4.1955 at the time of his initial appointment and the same was continued for nearly 30 years. As the age of superannuation .of the workmen of Singareni Collieries Company Limited is 60 years, the concerned Workman is entitled to be continued in service upto 30.4.2015. The action of the respondent in altering the date of birth of the Workman from 12.4.1955 to 55 years as on 15.6.2006 is wholly illegal, arbitrary and without jurisdiction. Basing on the above erroneous decision taken by the Apex Medical Board, the Workman was retired from service w.e.f. 30.6.2011. It is therefore prayed to direct the respondent to continue the Workman in service upto 30.4.2015 duly treating his date of birth as 12.4.1955 and pay the wages duly granting all other consequential and attendant benefits such as payment of wages from 1.7.2011 onwards till the date of his actual superannuation i.e. 30.4.2015.

3. **Respondent filed counter denying the averments of Claim statement as under**:

It is submitted that the Workman Sri Gaddam Rajaiah was appointed into the services of Respondent Company on 12.4.1976. The allegation that at the time of his appointment the date of birth of the Workman was recorded as 12.4.1955 and the said date of birth was entered in all the statutory service records of the concerned Workman such as Form-B register, Service Record, Form-O, CMPF records is denied and the Workman is put to strict proof of the same. It is submitted that the age / date of birth of the Workman was recorded in the Company Records, such as Identity & Service Card and Form-B Register as 25 years as on 1.10.1984 (Date of Birth-01-10-1959). As per this date of birth it is noticed that the Workman was appointed at the age of l6 years 6 months. Due to glaring disparity between the apparent age and the age recorded in the Company Records, the Workman was referred to Area Age Determination Committee. His Case was reviewed by the Area Age Determination Committee on 24-02-2005 and opined to refer him to the Apex Medical Board in accordance with the JBCCI guidelines. It is submitted that as per Implementation Instruction No.76 of the Joint Bipartite Committee for Coal Industry (JBCCI), the procedure in determination of the age/date of birth at the time of appointment is as follows:

(A) ***Determination of the age at the time of appointment****:*

(i) ***Matriculates****: In the case of appointees who have passed Matriculation or equivalent examinations, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.*

(ii) ***Non-matriculates but educated****: In the case of appointees who have pursued studies in a recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances.*

(iii) ***Ex-Servicemen****: In the case of Ex-servicemen who are not matriculates, the date of birth recorded in the Army Discharge Certificate shall be treated as correct date of birth and the same will not be altered under any circumstances. In the case of Ex-Servicemen who have passed Matriculation Examination, the date of birth recorded in the Matriculation Certificate will be treated as correct date of birth, provided they have passed the Matriculation examination before entering the Defence Services, otherwise the date of birth recorded in Army Discharge Certificate will be taken as correct date of birth.*

(iv) ***Illiterate****: In the case of' appointees not covered under the foregoing clauses, the date of birth will be determined by the Colliery Medical Officer keeping in view any documentary and other relevant evidence as produced by the appointee. Date of birth as determined shall be treated as correct date of birth and the same will not be altered under any circumstances.*

(B) ***Review/determination of date of birth in respect of existing employees****:*

(i)

a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Institutions and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.

b) Similarly, Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will he treated as authentic. Provided that where both documents mentioned in (i) (a) and (i) (b) above arc available, the date of birth recorded in (i) (a) will be treated as authentic.

(ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Age Determination Committee Medical Board. (C) Age determination committee/Medical Board for the above will be constituted by the Management. In the case of employees whose date of birth cannot be accordance with the procedure mentioned in (3) (i) (a) (i) (b) above, the date of birth recorded in the records of the Company namely, Form-B Register, CMPF Records and Identity Cards (Untampered) will be treated as final. Provided that where there is a variation in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board determined constituted by the Management for determination of age.

(D) For determination of the age, the Committee/ Medical Board referred to above may consider the evidences available with the Colliery Management and/or adduced before it by the employee concerned.

(E) Medical Board constituted for determination of age will be required to assess the age in accordance with the requirement of Medical Jurisprudence" and the Medical Board will as far as possible indicates the accurate age assessed and not approximately.

(F) Where the Management (i.e.) Area Age Assessment Committee consisting of General Manager, Personnel Manager and Medical Officer Incharge of the Area is satisfied that there is a glaring disparity between the date of birth recorded in the Company records and the apparent age of the employee, the cases may be referred to the Apex Medical Board located at Headquarters of the Company for determination of age.

(G) After the assessment of the age by the Age Determination committee/medical board the same will be computerized and print out of the same will be given to the employee concerned and the unit from where the reference was received within a month. If age is not, however, computerized, still the same will be intimated to the employee concerned and the Unit within a month.

(H) It was agreed that in cases where instead of date of birth, year has been recorded, 1st July of the year will be deemed to be the date of birth.

In compliance of the JBCCI guidelines, the case of the Workman was referred to Apex Medical Board and the Board reviewed the Age of the Workman on 15-06-2006 and after considering his own statement and evidence produced by him and as per the assessment of the Board the age of the Workman was assessed as 55 years as on 15-06-2006 (i.e. the date of birth as 15-06-1951). During the proceedings, the Workman accepted the decision of the Apex Medical Board and affixed his signature as a token of acceptance. Further, the decision of the Apex Medical Board was informed to the Workman vide Lr.No.RG4/OC1/ PER/G/012/507, dated 10-08-2006. Further, it is submitted that in accordance with Clause No. 11 of the above JBCCI guidelines, the decision of the Age Determination Committee/Medical Board will be binding and final. It is submitted that the Workman raised an Industrial Dispute

the Union through i.c. Singareni Miners and Engineering Workers Union before the Conciliation Authorities which was ended in failure. Subsequently, the matter was referred to this Tribunal for adjudication. It is submitted that all the service records of the Company which were maintained from the date of initial appointment of the concerned Workman till 2006 clearly and clinically establish the date of birth as 12-04-1955 is denied and the Workman is put to strict proof of the same. Company records, the Workman was referred to Area Age Determination Committee. His case was reviewed by the Area Age Determination Committee on 24-02-2005 and opined to refer his case to Apex Medical Board and the Medical Board reviewed the age of the Workman on 15-06-2006 and after considering his own statement and evidence produced by him and as per the assessment of the Board the age of the Workman was assessed age 55 years as on 15-06-2006 (DOB:15-06-1951). During the proceedings the Workman accepted the decision of the Apex Medical Board and affixed his signature as a token of acceptance. Further the decision of the Apex Medical Board was informed to the Workman vide letter dated 10-08-2006. t is submitted that the Workman having satisfied with the report of the Apex Medical Board and did not raise any dispute. As, an after though the raised a dispute at the fag end of his service which is liable to be rejected. According to the date of birth confirmed by the Apex Medical Board, the Workman retired from the services of the Respondent Company after working hours of 30-06-2011 after attaining the age of superannuation i.e. 60 years. The averment of the Workman that the concerned Workman should be continued in service up to the end of April, 2015 is denied. Further averment of the Workman that when the statutory records of Respondent Company show the date of birth of the concerned Workman as 12-04-1955, the Apex Medical Board has no jurisdiction or power to alter the date of birth of the concerned Workman, thereby depriving him nearly 4 years of service is denied and the Workman is put to strict proof of the same. Further averment of the Workman that the Apex Medical Board has no legal status or statutory force to modify the date of birth of the concerned Workman is denied. Workman is entitled to be continued in service up to 30-04-2015 is denied. In view of what has been stated above, the averment of the Workman that the Apex Medical Board has no legal status or statutory force to modify the date of birth of the concerned Workman is not correct and devoid of merits. Hence the prayer of the Workman to direct the Respondent Company to continue the concerned Workman service up to 30-04-2015 duly treating the date of birth as 12-04-1955 and pay the wages duly granting all other consequential and attendant benefits such as payment of wages from 01-07-2011 onwards till the date of the actual superannuation i.e. 30.04.2015 has no merits and liable to be rejected.

4. Workman filed photostat copies of documents, proceedings instructing the Workman to undergo periodical medical examination and proceedings informing the Workman that his case has been referred to Apex Medical Board to determine his age, his, service particulars, certificate issued by Dy. G.M. (Operations), Employee Master information and petition filed u/s 2K of I.D. Act, 1947 and reference order. On the other hand, Respondent has filed photocopies of nine documents, ie., procedure for determination of age of the employee, service book of Workman, "B" register of employees, Proeedings of Area Age Determination Committee, Minutes of area age determination committee, proceedings of Apex medical board, age assessment report, consent letter to proceedings of apex medical board and advance intimation of due date of retirement.

5. None of the parties have adduced oral evidence. Perused written arguments filed by both parties.

6. **On the basis of rival contentions and pleadings of both the parties, following issues emerge for determination**:-

I Whether the action of the management of M/s. SCCL for getting reviewed the age of Shri Gaddam Rajaiah voluntarily by the Apex Medical Board on 15.6.2006 is legal and justified?

II. To what relief the claimant is entitled for?

Findings:-

7. **Point No.I**:- In the present matter Workman has challenged the order dated 15.6.2006 of the Respondent Management M/s. Singareni Collieries Company Ltd., for getting review of the age of the Workman Sri Gaddam Rajaiah as recorded in his service book voluntarily by the Apex Medical Board and submitted that the action of the Respondent in altering his date of birth from 12.4.1955 to 55 years as on 15.6.2006 is wholly illegal, arbitrary and without jurisdiction. It is further submitted that the Apex Medical Board has taken an erroneous decision of determining the age of the Workman as 55 years on 15.6.2006 and that is without basing upon any medical report or material and also or without following the principles of natural justice. The Learned Counsel for Workman argued that the Workman was appointed in the Respondent Management Company as a General Mazdoor on 12.4.1976 and at the time of his appointment his date of birth was decided as 12.4.1955 and the same was entered in all statutory service records of the concerned Workman such as Form-B Register, Identity & Service record, and CMPF record etc.. Further, it is submitted that the age of superannuation of the Workman in the M/s. Singareni Collieries Company Ltd., is 60 years. Since his date of birth is 12.4.1955, hence, he is entitled to be continued in the service till 30.4.2015. However, during the year 2005, the reasons best known to the authorities of Respondent concerned, Workman was asked to report before the committee of the officers in the Respondent office and he was asked to go to Area Hospital, Kothagudem on 15.6.2006 where some signatures were obtained form him and vide proceeding dated 4/10.8.2006, the concerned Workman was informed that Apex Medical Board in it's meeting dated 15.6.2006 held the age of the concerned Workman as 55 years as on 15.6.2006. It is submitted that the Apex Medical board has

taken the said decision arbitrarily without affording him hearing opportunity and the Workman would be deprived of nearly 4 years of service.

8. Whereas the Respondent has contended that the allegation made by the Workman in his claim statement are baseless and false. Respondent contended that the Workman Sri G. Rajaiah was appointed in the service of the Respondent Company on 12.4.1976. The allegation that at the time of his appointment, the date of birth as 12.4.1955 was entered in all the service records of the concerned Workman such as Form-B register, Service Record, Form-I CMPF records is denied and the Petitioner is put to strict proof of the same. It is submitted that the date of birth of the Workman was recorded in the Company's records such as Identity & Service Card and Form-B Register as 25 years as on 1.10.1984. (Date of birth:-1.10.1959). As per this date of birth as recorded in Form-B Register, it was noticed that the Workman was appointed at the age of 16 years 6 months. Due to glaring disparity between the apparent age and the age recorded in the Company records, the Workman was referred to Area Age Determination committee and his case was reviewed by the committee on 24.2.2005 and the committee opined to refer him to the Apex Medical Board in accordance with the JBCCI guidelines. Respondent further contended that the as per Implementation Instruction No.76 of the Joint Bipartite Committee for Coal Industry (JBCCI), the procedure in determination of the age/date of birth at the time of appointment has been provided therein and according to Instructions No.76 of Joint Bipartite Committee for Coal Industry and in view of circular dated 1.8.1988 of the Company. Age of the workman has been reviewed and corrected in service record of workman as it was found that there was glaring disparity and apparent wrong entry as regards age of workman as recorded in his service record. The Respondent has reviewed and corrected the age and date of birth of the workman in his service record as per provision contained in Company's circular dated 1.8.1988. Hence, there is no arbitrariness and illegality in it.

9. Workman in his claim statement has claimed that at the time of his appointment the date of birth was decided as 12.4.1955 and the same was entered in all the statutory service records such as, Form-B Register, Identity & Service Record and CMPF record etc.. Therefore, according to entry in his service record, his age of superannuation will be on 30.4.2015, as per rule of the Company at the retirement age of 60 years. But the Respondent has reviewed his date of birth as 55 years as on 15.6.2006 arbitrarily and illegally. In support of his claim, Workman through list dated 17.3.2013 has filed photocopies of documents. The perusal of the documents, reveals that document No.1 is a notice to the Workman Sri Gaddam Rajaiah, issued by the Supdt. Of Mines, OCP-I, RG-IV directing workman to undergo periodical medical examination on 13.4.2003 with relevant documents. The Document No.2 is a letter issued by Addl. General Manager, Opencast Mine No.1: RG-IV, letter dated 4/10.8.2006 addressed to Workman Sri Gaddam Rajaiah, whereby the Workman has been informed that his case has been referred to the Apex Medical Board to determine his age and the Apex Medical Board Meeting on 15.6.2006 has examined the service records and confirmed the age of Workman as 55 years as on 15.6.2006. It is also mentioned therein that Workman has given his consent before the Apex Medical Board to the above decision. These Documents No.1 and 2 do not disclose that the date of birth of workman was recorded as 12.4.1955 as he claimed in petition. The Document No.3 is the service particulars of the Workman wherein the details of the Workman Sri Gaddam Rajaiah is mentioned and at Point No.6, his date of appointment has been mentioned as 12.4.1976 and at Point No.9, the date of birth has been mentioned as 12.4.1955. It reveals that it has been issued and signed by Dy.G.M.(operations),OCM No-1, RG-IV. Further, Document No.4, is the copy of Medical Card issued by the authority of M/s. Singareni Collieries Company Ltd., in the name of Workman Sri Gaddam Rajaiah. In the column of Age/DOB the date of birth is mentioned 12.4.1955. But this entry has been made later on after correction as per Apex Medical Board determination on 15.6.2006. Initially the age of the Workman has been mentioned in the Medical Card in terms of the years as per record. But later on by over writing on earlier entry of the age of workman it has become illegible to read and further entry has been written as 12.4.1955. Further, in the column of date of retirement, the date is written 30.4.2015 and there is overwriting in the year of retirement of the Workman. It is utterly surprising to me that the correction made in the age of workman on medical card has not been done under the signature of the concerned authority. Thus, the correction made in the medical card raises great suspicion regarding genuineness of entry on Medical card. Whether it was endorsed on the basis of service record. Thus, the workman failed to produce cogent and relevant documentary evidence in support of his claim of date of birth as he claimed in his petition. Thus, it seems that the entry regarding date of birth of the workman a Medical Card has been recorded by manipulation without support of any service record. The Document No.5 is paper of employee master information which appears to be generated from the computer but it has not been signed or verified or issued by any authority of the Company. The paper No.6 is the letter addressed to the ALC(C) by the General Secretary of the Union. Paper No.7 is the minutes of the conciliation proceedings, paper No.8 is Management views on the dispute raised by the General Secretary of the union in connection of the age of the Workman. The workman do not find support to his claim from these documents as discussed above that in service record his date of birth has been recorded as 12.4.1955 at the time of his appointment. Further, the Document No.9 is the copy of the reference order.

10. Per contra, Respondent contended that in the service record and Form-B register, Form-I CMPF records Age/DOB of workman the age/DOB has been recorded as 25 years as on 1.10.1984. Later on as per date of birth of Workman in the service record it was noticed that Workman has been appointed at the age of 16 years 6 months. Due to glaring disparity between the apparent age and the age recorded in the Company records. Workman was referred to the Area Age Determination Committee and his case was reviewed by the committee on 24.2.2005 and

confined to refer to Apex Medical Board in accordance with JBCCI guidelines which contains the procedure for determination of age or DOB of the Workman at the time of appointment. The Instruction and Procedure of JBCCI is binding upon the Workman. The Apex Medical Board has determined the age of Workman as 55 years as on 15.6.2006 adopting procedure/provision prescribed and hence, date of birth of Workman has been determined as 15.6.1951. In support of contention Respondent has filed documentary evidence through list dated 4.6.2014. It would be apposite to mention here that both parties have not produced any oral evidence in support of their pleadings. The Respondent has filed documents No.1, pg.1-6, is the circular of the M/s. Singareni Collieries Company Ltd., dated 1.8.1988 which contains the procedure for determination /verification of the age of the employees and for resolution of the dispute case of the service record. Further, the Document at pg. No.7-8, are the copy of the service record of the Workman Gaddam Rajaiah, wherein the details of the Workman has been recorded at the front –page and in first column, the name of the Workman Sri Gaddam Rajaiah has been recorded. At the second column, father's name, Pocha Goud has been recorded. Further, at the column of Age, the age of Workman as 25 Years as on 10.10.84 has been recorded. Later on an entry regarding age of workman has been incorporated by the authority, 55 years as on 15.6.2006 below the earlier recorded entry as per Apex Medical Board's report. It reveals that this service book has been prepared on 23.5.1985 by the authority. Further, at page No.2 of the service book, the entries regarding promotion of the Workman have been mentioned as well as the order of transfer of the Workman. Further, entry regarding age of the Workman as decided by the Apex Medical Board on 15.6.2006 has been recorded as 55 years as on 15.6.2006. Further, Pg.No.9 is the copy of Form-B register pertaining to service record of workman and it would reveal the details of the Workman. This document, Copy of Form-B register bears the signature of the GM, OCM-I, RG-3 of the Company. In the column No.2, of Form-B name of the Workman Gaddam Rajaiah has been mentioned and in column No.3, the Workman's father's name Pocha Goud has been recorded. At Column No.4 age of workman Gaddam Rajaiah has been mentioned as 25 years as on 10/1984. The Photograph of the Workman has also been affixed at column 15 against his name. The document paper Nos.10,11,12,13,14 pertains to the proceeding of age determination of the Workman as conducted by the Apex Medical Board committee under the JBCCI and as per provision of the circular dated 1.8.1988 of the M/s. Singareni Collieries Company Ltd.. Thus, it is established that in the service record and Form-B register, the age /DOB of the Workman was recorded as 25 years as on 1.10.1984, in the year 1985 and that entry of age has not been challenged or contradicted by the Workman by producing any cogent reliable document.

11. On the other hand, Workman has not produced any reliable document in support of his claim that at the time of his initial appointment his date of birth was as 12.4.1955. The workman has failed to establish his claim of date of birth as 12.4.1955. No document has been filed by Workman in this context to establish his case. As far as the entry of the date of birth on Medical card as 12.4.1955 is concerned, the entry has been made by over writing on earlier entry and that has not been made on the basis of entry of Age/DOB of workman as recorded in his service record and Form-B Register that has been recorded much earlier in the year 1984 and that too has been recorded in natural course of business while preparing service record of the Workman of the Company without deliberate intention on the part of Company and since that entry of Age/DOB of Workman was recorded as on 10/1984, the Workman has not challenged or questioned that entry of service record and Form-B in the past. Therefore, the entry recorded as on 1.10.1984 is reliable and admissible. Admittedly, the age/DOB of the Workman has been recorded in the service book as 25 years as on 1.10.1984 and that entry in service record has been made on 23.5.1985 when the service record got prepared. Respondent counsel contended that Instruction No.76 of JBCCI of Coal Industry, contained the procedure for determination of the age of the Workman at the time of appointment and thus contained procedure for review/determination of the DOB in respect of the existing employees. Respondent has filed circular dated 1.8.1988 pertaining to procedure for determination/ verification of the age of the employee. It contains the procedure in respect of the cases when there is variation of age in various records and glaring disparity in the age recorded in the Company's records and the apparent age of the employees. The procedure contained in the circular is extracted as below:

i) Where there is variation in the age recorded in the records such as Form 'B' Register, CMPF records and identity cards (untampered) such cases will be referred to the Age Determination Committee /Medical Board consisting of the General Manager/Chief, Personnel Manager and Medical Officer-in-charge of the Area.

ii) Where there is variation in records, this Committee will consider evidences available with the Colliery Management and/or adduced before it, by the employee concerned and it will be required to assess the age in accordance with the requirement of "Medical Jurisprudence" and the Medical Board as far as possible indicate the accurate age assessed and not approximately.

iii) Where there is glaring disparity between the date of birth recorded in the company records and the apparent age of the employee, such cases may be referred to the Apex Medical Board located at Headquarters of the company for determination of the age, by the Area Age Determination Committee.

The Apex Medical Board at Headquarters has been constituted with—

" Chief Medical Officer, General Manager/Chief (of the concerned Area/Dept.) from where the case is referred and Chief Personnel Officer ."

The details of cases falling under Category (iii) above for a decision b y the Apex Medical Board may be sent with specific recommendations by the General Manager of the concerned Area based on the decision taken by the Area Age Assessment Committee, to the Chief Personnel Officer for scrutiny and further necessary action.

It has also been agreed that Age disputes pending in the case of employees superannuated on and after 1st July, 1987 will be examined in accordance with the revised procedure and all past cases will not be re-opened."

That circular is very much binding upon the Workman and also on Respondent.

12. Now let us examine whether the Respondent Management has followed the procedure contained in the said circular dated 1.8.1988 for determination / review of the age of the Workman in the present matter. The Respondent has filed the document pertaining to the proceeding of the age determination / review of the workman by the Apex Medical Board i.e., Document No.12 dated 15.6.2006. The document No.12 would reveal that the age of the Workman has been determined as 55 years as on 15.6.2006 and the said order bears the signature of three members of the Apex Medical Board. The contents of the order dated 15.6.2006 of the Apex Medical Board is extracted is herein below:-

"The Members of the Apex Medical Board met on 15.6.2006 at Main Hospital, Kothagudem, to determine the age of Sri Gaddam Rajaiah, E.C.No. 1429516, General Mazdoor, OCP-I, RG-IV.

After considering his own statement, the records of service of Sri Gaddam Rajaiah, E.C.No.1429516, General Mazdoor, OCP-I, RG-IV, and by appearance of the candidate, the Apex Medical Board decided that Sri Gaddam Rajaiah, E.C. No. 1429516, General Mazdoor, OCP-I, RG-IV, is 55 years as on 15.6.2006.

His age is 55 years as on 15.6.2006 (Fifty five years as on fifteenth June, Two thousand Six.)"

13. Thus, it reveals from the said order that the Apex Medical Board while determining the age of the workman has considered the statement of the Workman and record regarding his service, and appearance of the Workman and proceeded to decide the age of the Workman Gaddam Rajaiah as 55 years as on 15.6.2006 This order does not speaks that whether the medical examination of the Workman was done by any Medical Board before determination of the age of workman. Whereas the circular dated 1.8.1988 of the Company specially provides the procedure for determination of the age of Workman in case of glaring disparity between the date of birth recorded in the Company records and the apparent age of the employee that the age has to be determined in accordance with the Principles of Medical Juris-prudence and further it is provided that medical board as far as possible to indicate the accurate age assessed. But the order dated 15.6.2006 of the Apex Medical Board do not speak about conducting medical examination of the Workman to determine his age. Thus, the age determination of the workman by the Apex Medical Board has not been done according to principle of Medical Jurisprudence. There is no iota of evidence has been adduced that the Apex Medical Board has determined the age of workman as 55 years as on 15.6.2006 by following norms and Principles of Medical Jurisprudence. Therefore, the order dated 15.6.2006 of the Respondent Company determining the age of Workman as 55 years as on 15.6.2006 n the basis of report of Apex Medical Board is found to be violation of the procedure prescribed by the Company itself under its' circular dated 1.8.1988 for the said purpose. Moreover, the impugned order dated 15.6.2006 determining the age of the Workman has been passed by the Respondent Company without affording the opportunity of hearing to the concerned Workman and in violation of principles of natural justice and the same is not sustainable in the eye of law.

In this context I would like to make a reference of the decision of **Hon'ble Apex Court in the case of Shankar Lal vs Hindustan Copper Ltd. on 20 April, 2022 civil appeal No.2858 of 2022,** wherein the Hon'ble Apex Court have held:-

"12. The stand of the employer, thus, is that in his service book there was error in recording the age of the appellant as 26 years in 1975 and we ought not to give any credence to such recordal. The respondents had only corrected an error and such recordal in service book cannot be treated to be acceptance of the appellant's date of birth as 21st September 1949. We, however, find that the authorities proceeded in this matter in a rather mechanical manner and embarked on a unilateral exercise of correcting the age entry in the service book on their perception that an error was being corrected. This exercise was conducted without giving any opportunity of hearing to the appellant and at the fag end of his service tenure. Otherwise, various documents including the L.I.C. policy consistently reflect 21st September 1949 to be the appellant's birthdate.

18. The employer has taken a stand that the date of birth recorded of the appellant in the service book was an act by mistake. This is a weak explanation in our opinion. Several subsequent steps were taken by the employer in relation to the appellant's employment on the basis of the entry in his service book. The employer are the custodian of these records. They acted all along on the basis of the service entries till the appellant took VRS. It has been pleaded by the appellant that at the time of his appointment, the office of the respondent company entered in all their records his date of birth as 21st September 1949. In the light of these facts, we are not inclined to accept the version of the employer that service book recordal was a mistake. The employer, a public sector unit in this case, was expected to act with a certain element of responsibility in maintaining the service records of their workmen and ensure that there

is uniformity in particulars concerning individual employees. There is no explanation as to how this mistake occurred and how pay slips continued to be issued carrying the mistaken date of birth for such a long time. The High Court in our view ought not to have had accepted "mistake" as the cause for different entries in different documents.

We find the action of the employer lacking in authority of law in this case on two counts. First, it fails for not adhering to the principles of natural justice. The decision not to follow the service book recordal was taken without giving an opportunity of hearing to the appellant. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e., 21st September 1949 was the birthdate of the appellant and this was a long established position. Moreover, since in the own records of the employer two dates were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake had crept in. That process would also have had to involve participation of the appellant, which would have been compatible with the principles of natural justice. There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service. We are not referring to those authorities in this judgment as the ratio laid down on that count by this Court is not relevant for adjudication of this appeal. The very reasoning on which an employee is not permitted to raise age−correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. It is the employer here who had proceeded on the basis of age of the appellant reflected in his service book during the latter's service tenure and they ought not to be permitted to fall back on the Form "B" which would curtail the VRS benefit of the appellant."

Similarly, in the present matter, the Respondent Company has determined/reviewed the age of workman is 55 years as on 15.6.2006, through Apex Medical Board, but the workman was not afforded opportunity of hearing or counter the report of the Apex Medical Board as regards the determination of his age in his service record. The decision of the Respondent Company of reviewing the age of the workman in the service record as 55 years as on 15.6.2006 was not done by following the principles of natural justice. Therefore, the impugned order dated 15.62006 has been passed in violation of principles of natural justice in respect of the determination of the age of the workman and also in violation of the procedure contained in the circular dated 1.8.1988. Therefore, the order dated 15.6.2006 of the Respondent Company determining and recording the entry regarding the age of the workman in his service record as 55 years as on 15.6.2006 is not sustainable and liable to be set aside.

14. Thus, in view of the fore gone discussion and law laid down by the Hon'ble Apex Court as discussed above, I am of the considered opinion that the Respondent management has passed the order dated 15.6.2006 for getting the review of the age of the Workman in his service record as 55 years as on 15.6.2006 is in violation of the principles of natural justice, as well as Respondent has not followed the procedure for determination of age as laid down in circular Dated 1.8.1988 of Company and same is not sustainable in the eye of Law. Therefore, the action of the Respondent management for getting reviewed the age of 55 years as on 15.6.2006 Shri Gaddam Rajaiah voluntarily by the Apex Medical Board vide order dated 15.6.2006 is neither legal nor justified.

Thus, Point No.I is decided accordingly.

15. **Point No.II**: - In view of the fore gone discussion and Law laid down and also finding given in Point No. I, the order dated 15.6.2006 of the Respondent Company determining the age of the Workman as 55 years under review of Apex Medical Board is not sustainable and liable to be set aside. However, the claim of the workman that his date of birth as per his service book was 12.4.1955, is not established. Moreover, the reference is confined to the impugned order dated 15.6.2006 passed by Respondent authority regarding age/Date of birth of Workman and that has been answered by this Tribunal as per Law. The claim petition is decided accordingly.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of M/s. M/s. Singareni Collieries Company Ltd., for getting reviewed the age of Shri Gaddam Rajaiah voluntarily by the Apex Medical Board on 15.6.2006 is held illegal and unjustified. Respondent management is directed to restore the date of birth of the Workman as recorded earlier in his service record and Form-B Register and he will be entitled for all consequential benefits as per rules and paid accordingly within four months after receipt of this order. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 22nd day of February, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent

Nil Nil

Documents marked for the Workman

Nil

Documents marked for the Respondent

Nil

नई दिल्ली, 12 जून, 2024

का.आ.1169—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सचिव, डीडीए, सिरीफोर्ट स्पोर्ट्स कॉम्प्लेक्स, अगस्त क्रांति मार्ग, खेल गांव, नई दिल्ली; मेसर्स नीति एंटरप्राइजेज, किसान विहार, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री द्वारका, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट(संदर्भ संख्या 41/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल–42012/186/2014-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1169—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2015) of the **Central Government Industrial Tribunal cum Labour Court –I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary, DDA , Sirifort Sports Complex, August Kranti Marg, Khel Gaon, New Delhi ;M/s Niti Enterprises, Kisan Vihar, New Delhi, and Shri Dwarka, Worker,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42012/186/2014-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

Central Government Industrial Tribunal Cum – Labour Court-I, New Delhi

ID No.41/2015

Sh. Dwarka S/o Sh. Dayal Prasad,

C/o 1800/9, Govindpuri Ext.,
Main Road, Kalkaji,
New Delhi-110019

Workman…

Versus

1. The Secretary,
   DDA,
   Sirifort Sports Complex,
   August Kranti Marg, Khel Gaon,
   New Delhi-110049
2. M/s Niti Enterprises,
   L-88, Kisan Vihar,
   New Delhi-110041

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-42012/186/2014-IR(DU)) dated 12.01.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the action of the management of NITI Enterprises, Contractor in terminating the services of the workman Sh. Dwarka w.e.f. 01.05.2013 can be construed as termination of employment by DDA presuming the entity of contractor as sham and camouflage? If not what relief the workman concerned is entitled to*?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Claim statement filed, rebuttal written statement filed on behalf of the management no. 1.

3. Management No.2 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 16.07.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 14.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1170—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स टॉप्स सिक्योरिटी लिमिटेड, सुल्तान सदन, लेन नंबर 3, वेस्ट एंड मार्ग, सैदुलाजब, नई दिल्ली; महाप्रबंधक परिचालन, दिल्ली मेट्रो रेल कॉर्पोरेशन, बाराखंभा रोड, दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री कैलाश शर्मा, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 146/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42012/63/2016-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1170—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 146/2016) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Tops Security Ltd., Sultan Sadan, Lane No. 3, West End Marg, Saidulajab, New Delhi; The General Manager Operations, Delhi Metro Rail Corporation, Barakhamba Road, Delhi, and Shri Kailash Sharma, Worker,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42012/63/2016-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

ID No. 146/2016

Sh. Kailash Sharma S/o Sh. Suresh Sharma,
C/o Sh. Jai Prakash Vhardwaj, 176-Rani Khera,
Delhi-110081

Workman…

Versus

1. M/s Tops Security Ltd.,
Sultan Sadan, Lane No.3,

West End Marg, Saidulajab,
New Delhi-110030.

2. Delhi Metro Rail Corporation,
General Manager Operations,
Metro Bhawan, Fire Brigade Lane,
Barakhamba Road, Delhi-110001

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-42012/63/2016-IR(DU)) dated 21.07.2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the action of the management of M/s Tops Security Ltd., working for DMRC, New Delhi in termination the services of Sh. Kailash Sharma S/o Suresh Sharma is fair and legal? If not to what relief the workman is entitled to and from which date?*"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Claim statement filed, rebuttal written statement filed on behalf of the management no. 1&2.

3. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 05.07.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 12 जून, 2024

का.आ. 1171—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स महाप्रबंधक, मदर डेयरी फ्रूट एंड वेजिटेबल प्राइवेट लिमिटेड, पिलखुआ यूनिट, हापुड़, (यूपी),** के प्रबंधतंत्र के संबद्ध नियोजकों और **महासचिव, मदर डेयरी स्टाफ यूनियन, गाजियाबाद, (उ.प्र.),** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 144/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42011/185/2017-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1171—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 144/2018) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Mother Dairy Fruit & Vegetable Pvt. Ltd., Pilakhua Unit, Hapur,(U.P.), and The General Secretary, Mother Dairy Staff Union, Ghaziabad, (U.P.),** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42011/185/2017-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

Before the Justice Vikas Kunvar Srivastava (Retd.) Presiding Officer, Government of India Ministry of Labour & Employment, Central Government Industrial Tribunal Cum – Labour Court-I, New Delhi

ID No. 144/2018

The General Secretary,
Mother Dairy Staff Union,
Pilakhua At-234, Ambedkar Road,
Ghaziabad, U.P. - 2011001.

Workman…

Versus

The General Manager,
Mother Dairy Fruit & Vegetable Pvt. Ltd.,
Pilakhua Unit, Hapur,
U.P. - 245304.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-42011/185/2017-IR(DU)) dated 21.03.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the action of the management of Mother Dairy in refusing to talk with a union on their demands is legal and justified and what directions are necessary in the case?"*

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Claim statement filed, rebuttal written statement filed on behalf of the management.

3. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 17.05.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 12 जून, 2024

का.आ. 1172—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स महाप्रबंधक, भारत इलेक्ट्रॉनिक्स लिमिटेड, भारत नगर, गाजियाबाद, (उ.प्र).,** के प्रबंधतंत्र के संबद्ध नियोजकों और **महासचिव, भारत इलेक्ट्रॉनिक्स वर्कर्स यूनियन, सी/ओ भारत इलेक्ट्रॉनिक्स, भारत नगर, गाजियाबाद, (यू.पी.),** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 128/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-14011/05/2012-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1172—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 128/2012) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Bharat Electronics Ltd., Bharat Nagar, Ghaziabad, (U.P.), and The General Secretary, Bharat Electronics Workers Union, C/o Bharat Electronics, Bharat Nagar, Ghaziabad, (U.P.),** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-14011/05/2012-IR (DU]

DILIP KUMAR, Under Secy.

ANNEXURE

Before the Justice Vikas Kumar Srivastava (Retd.) Presiding Officer, Government of India Ministry of Labour & Employment,Central Government Industrial Tribunal Cum – Labour Court-I, New Delhi

ID No. 128/2012

The General Secretary,
Bharat Electronics Workers Union
C/o Bharat Electronics, Bharat Nagar,
Ghaziabad, (U.P.)

Workman…

Versus

The General Manager,
Bharat Electronics Ltd.,
Bharat Nagar,
Ghaziabad, U.P.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-14011/05/2012 (IR(DU)) dated 09.10.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the action of the BEL management, Ghaziabad is not protecting the salary on promotion form TC to E1 cadre and causing a consequential loss to workers in terminal benefit is justified? If not, what relief the they are entitled to?"*

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Claim statement filed, rebuttal written statement filed on behalf of the management.

3. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 25.02.2015. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 12 जून, 2024

का.आ. 1173—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स दिल्ली मेट्रो रेल कॉर्पोरेशन लिमिटेड, मेट्रो भवन, बाराखंभा रोड, नई दिल्ली; न्यूविजन कमर्शियल एंड एस्कॉर्ट सर्विसेज (एनसीईएस), सिकंदरपुर, गुड़गांव, हरियाणा, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री हरदीप, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 53/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-116- आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1173—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/2022) of the **Central Government Industrial Tribunal cum Labour Court – II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Delhi Metro Rail Corporation Ltd., Metro Bhawan, Barakhamba Road, New Delhi ; Nuvision Commercial & Escort Services (NCES), Sikanderpur, Gurgaon, Haryana, and Shri Hardeep,Worker,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42025/07/2024-116-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 53/2022

Sh. Hardeep, S/o Sh. Ram Gopal,
R/o House No-112, Baba Pana, Baba Kakroi,

Sonipat, Haryana-131001.

VERSUS

1. Delhi Metro Rail Corporation Ltd.
Metro Bhawan, 03rd Floor, A-Wing,
Fire Brigade Lane, Barakhamba Road, New Delhi-110001.

2. Nuvision Commercial & Escort Services (NCES),
SCO-16, 17, 18, Shiv Narain Complex, City Court,
Sikanderpur, Gurgaon, Haryana-122002.

AWARD

This is an application of U/S 2A of the Industrial Disputes Act (here in after referred as an Act). Claimant had stated in their claim statement that he was appointed by the management-2 on the post of Tom Operator on 27.08.2018 and his last drawn wages was Rs. 21,000/- Per month. The management had issued the ID No. 114181. At the time of appointment the management-2 had taken the amount of Rs. 1,35,000/- in cash from him as security amount, but the management had not given any receipt of the said amount. The management did not issue any appointment letter, leave book, Pay slip, HRA etc. to him. The management-2 has deputed to him in the management no-1. He had been doing his work with diligently and never given any chance of complaint to the managements but he has not been provided any legal facilities. The workman used to work under the direction and supervision of management-1 & 2. That on 29th March 2020, the Minsitry of Home Affairs issued an order under the Disaster Management Act 2005, and declared complete lockdown. During the lockdown period, the management-2 had paid the wages to workman till May 2020 and on 01.06.2020, when the workman had visited at the office of the management-2 for joining his duty, the management did not take him on duty and on same day on 01.06.2020, the workman was illegally terminated by the management from his service, without any rhyme or reason. After the illegal termination workman is jobless. He has gone to the conciliation officer, but, no result was yielded. Hence he has filed the claim.

Both management-1 & 2 had appeared and filed the WS denying the averment made in the claim. They submit that claim of the claimant is not maintainable and is liable to be dismissed.

After completion the pleadings, following issues have been framed vide order dated 05.12.2022 i.e.:-

1. Whether the proceeding is maintainable.
2. Whether there exist employer and employee relationship between the claimant and the management-1.
3. Whether the service of the claimant was illegally terminated by the management-2.
4. To what relief the claimant is entitled to and from which date.

Claimant is asked to prove his case. However, despite providing a number of opportunities, claimant has not turned up to prove his claim. As the claimant has not turned up for proving his case, his claim stands dismissed. Award is passed accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

ATUL KUMAR GARG, Presiding Officer

Date:- 01.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1174—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **निदेशक, जीएमआर, न्यू उड़ान भवन, टी-3, आईजीआई एयरपोर्ट, नई दिल्ली; क्वेस कॉर्प लिमिटेड, मोहन इंडस्ट्रियल एस्टेट, बदरपुर , नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री मिथुन कुमार वर्मा,**के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 172 of 2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-115- आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1174—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 172 of 2019) of the **Central Government Industrial Tribunal cum Labour Court – II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, GMR, New Udan Bhawan, T-3, IGI Airport, New Delhi; Quess Corp. Limited, Mohan Industrial Estate, Badarpur, New Delhi, and I.D. No. 161/2023 Shri Parveen Malik, Worker, Through- Indian National Migrant Worker's Union, Kalkaji, New Delhi ;I.D. No. 162/2023 Shri Mithun Kumar Verma, Worker, New Delhi,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42025/07/2024-115-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 172/2019

Sh. Mithun Kumar Verma, S/o Sh. Ramesh Chand Verma,

R/o- RZH-4, Gali No- 2, Raj Nagar Part-2, Palam Colony,

New Delhi- 110045.

VERSUS

1. The Director, GMR

New Udan Bhawan, T-3, IGI Airport, New Delhi-110037.

2. Quess Corp. Limited.

B1/I-1, 1st Floor, Mohan Industrial Estate, Near Badarpur,

New Delhi-110044.

AWARD

This is an application of U/S 2A of the Industrial Disputes Act (here in after referred as an Act). Claimant had stated in their claim statement that he had been working with the respondent-2 since 04.10.2016 at the post of Supervisor at the last drawn salary Rs. 18, 500/- Per month. Managements had issued him the I.D i.e. AEPDEL 3D 281045 or AEP DEL 1247099 or AEP DEL 0038235 last validity date of which is 31.12.2018 and address of the workplace is IGIA terminal T-3. He had been doing his work with diligently but he has not been provided any legal facilities and the management used to deduct the ESI and provident fund from the salary of the employee but had not provided any ESI card or PF receipts. When the applicant had fallen ill in the month of May 2018, due to which the employee was on leave for five days by giving information over phone to Veerpal, Project Executive Officer of management-2. When the employee recovered and took his medical certificate, he returned to his duty. On 03.06.2018 when workman appeared before the management, managers took his medical certificate from workman and clearly refused to reinstate the employee to work. he was terminated without any reason. He has sent the demand letter but he has not been taken on duty. He has gone to the conciliation officer, but, no result was yielded. Hence he has filed the claim.

On 25.05.2022 management-1 had already been proceeded ex-parte. Management-2 had appeared and filed the WS denying the averment made in the claim. He submit that claim of the claimant is not maintainable and is liable to be dismissed.

On 25.05.2022, issues have been framed. Claimant is asked to prove his case. However, despite providing a number of opportunities, claimant has not turned up to prove his claim. As the claimant has not turned up for proving his case, his claim stands dismissed. Award is passed accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

ATUL KUMAR GARG, Presiding Officer.

Date: 24.04.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1175—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय**, लखनऊ के पंचाट (पहचान **संख्या 64/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **06/06/2024** को प्राप्त हुआ था।

[सं. एल.-22013/01/2024-आई.आर. (सी.एम. -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 12th June, 2024

S.O. 1175—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 64/2020***)* of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on **0***6/06/2024***.**

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 64/2020

Ref. No. D-852/AB/2020/41/IR/DDN

Prem Pal Vs. FCI

BETWEEN

Sri Prem Pal S/o Sri Sri Mangli Prasad,
Village- Narayanpur, Post- Musepur Jai Singh, PS- Barkhera, Tehsil- Bisalpur District- Pilibhit (U.P.)

…… Workman

AND

(1) The General Manager (Principal Employer)
Food Corporation of India,
Regional Office, T.C.3, V-Vibhuti Khand, Gomti Nagar, Lucknow (UP)

(2) The Regional Manager (Appointing Authority)
Food Corporation of India (FCI),
District, Office, Shahjahanpur (U.P.)

(3) Sri Rajendra Saxena (Representative)
M/s Keshav Singh and Ors. T.P. No. 315. Katia Tolla,
Shahajanpur (U.P.)

……. Respondent

AWARD

By letter/order dated 09.09.2020 the following reference has been referred to this Tribunal for adjudication.

"*Whether the termination of the service of Sri Prem Pal S/o Sri Mangli Prasad, who was engaged in Roja Depot of FCI, Shahajanpur, (UP) by M/s Keshav Singh, Contractor of FCI, for the period 08.07.2008 to 23.04.2010 is proper and justified".*

If not, to what relief, the workman is entitled to?"

From the perusal of the record the position which emerged out that on 21.10.2023 notice was issued to the workman to file statement of claim along with witness and documents.

Thereafter on the following dates i.e. on 01.01.2021, 08.11.2021, 07.03.2021, 20.05.2022, 12.8.2022, 26.10.2022, 11.01.2023 time was granted to file statement of claim by claiamnt however the same was not filed.

11.01.2023

Matter taken up revised list.

Parties absent.

Last opportunity is granted for CS.

List on 21.03.2023.

On 21.03.2023 an order was passed quoted herein below:-

Matter taken up in revised list.

Sri Neeraj Singh holding brief Sri Dhirendra Singh for FCI.

None for claimant.

In spite of last opportunity, claim statement is not filed, accordingly opportunity for statement of claim is closed.

List on 13.03.2023 for ex-parte hearing.

On **08.08.2023** was passed held as under:-

Matter taken up in revised list.

Sri Dhirendra Sing For FCI.

None for claimant.

List on 03.11.2023 for ex-parte haring. Notice to clamant.

Today when the matter was taken up in the revised cause list neither the workman nor any legal representative appeared also till date no statement of claimant has been filed.

Accordingly after hearing Sri Dhirendra Singh learned counsel for the respondent and going through the record, taking into consideration the facts, stated here and above that in spite of due opportunity statement of claim has not been filed by claimant.

So taking into consideration the said facts and the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workmen/claimant has filed any statement of claim, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; the workman is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

Lucknow.

Date 08.02.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1176—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एसडीएमसी पार्किंग, रामकृष्ण पुरम, नई दिल्ली; दातार सिक्योरिटी सर्विस ग्रुप, द्वारा -श्री एडेल सिंह भिंडर (सीईओ) एवं श्री संजय (प्रबंधक) ,210, द्वितीय तल, भीकाजी कामा प्लेस, भवन-II, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों और **आई.डी. संख्या 161/2023 श्री परवीन मलिक, कामगार, भारतीय राष्ट्रीय प्रवासी श्रमिक संघ, कालकाजी, नई दिल्ली; आई.डी. संख्या 162/2023 श्री अक्षय कुमार, कामगार, भारतीय राष्ट्रीय प्रवासी श्रमिक संघ, मेन रोड कालकाजी, नई दिल्ली,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 161 & 162 of 2023) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-114- आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1176—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 161 & 162 of 2023) of the **Central Government Industrial Tribunal cum Labour Court –II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **SDMC Parking,Rama Krishna Puram, New Delhi ; Datar Security Service Group, Through- Shri Adel Singh Bhinder (CEO) & Sh. Sanjay (Manager), 210, Second Floor, Bhikaji Cama Place, Bhawan-II,New Delhi, and I.D. No. 161/2023 Shri Parveen Malik, Worker, Through- Indian National Migrant Worker's Union, Kalkaji, New Delhi; I.D. No. 162/2023 Shri Akshay Kumar, Worker,Through- Indian National Migrant Worker's Union, Main Road Kalkaji, New Delhi,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42025/07/2024-114-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 161/2023

Sh. Parveen Malik, S/o Sh. Brahm Singh,
House No.- X- 647, Raghubar Pura No-01, Gali No.-05,
Gandhi Nagar, New Delhi- 110031.

Through- Indian National Migrant Worker's Union,
1770/8, 03rd Floor, Govind Puri Extn. Main Road Kalkaji,
New Delhi-110019.

I.D. No. 162/2023

Sh. Akshay Kumar, S/o Sh. Sanjiv Kumar,
R/o- Lilaun, Shamli, Lilon, Uttar Pradesh-247776.
Through- Indian National Migrant Worker's Union,
1770/8, 03rd Floor, Govind Puri Extn. Main Road Kalkaji,
New Delhi-110019.

VERSUS

1. SDMC Parking,
780, Major Somnath Marg, KD Colony,
Sector-09, Rama Krishna Puram, New Delhi-110022.

2. Datar Security Service Group,
Through- Sh. Adel Singh Bhinder (CEO) & Sh. Sanjay (Manager),
210, Second Floor, Bhikaji Cama Place, Bhawan-II,
New Delhi- 110066.

AWARD

These are two applications of U/S 2A of the Industrial Disputes Act (here in after referred as an Act). Claimants had stated in their claim statements that they had been working with the respondent-1 since 02.12.2021 and 11.08.2021 at the post of **parking attendant** at the last drawn salary of Rs. 10,000/- per month respectively. Respondent-1 is the main employer and Respondent-2 is a fake contractor who has been appointed by the employer by violating the **contract labour (Regulation and Abolition) Act 1970** with the sole intention of not providing legal facilities to the employees. Management-1 shows the record of employees in the management-2 records, whereas the employees never had any relation with respondent no.-2 nor has the government given any permission to respondent-1 to run the contract under **Contract Labour (Regulation and Abolition) Act 1970.** The service record of the applicant/employee was clean and the employers had no complaints of any kind regarding the work of the employee. The employers had made the employee sign many blank papers, blank vouchers, blank agreement letters and blank appointment letters at the time of appointment during the service but did not give a copy of the same to the employees. The employer did not provide any legal facilities to the applicant like minimum salary as per the post prescribed by the government, appointment letter, salary sheet, leave book, attendance card, weekly and festival leave, bonus, overtime, ESI PF, etc. when the employees demanded all the above mentioned legal benefits, the employer immediately became angry and in a spirit of revenge, without the salary earned by the employee from 01.05.2022 to 22.06.2022 without any compensation to the employee, without prior notice, without any notice charge sheet, without any rhyme and reason, on 23.06.2022, the employers had illegally terminated the employees by forcibly signing some blank papers. Employees through their union sent a written demand letters to the employer through speed post on 29.08.2022 asking the employers to pay the outstanding salary, outstanding overtime, other outstanding statutory amounts and to reinstate them in their old job, but the employers did not give any reply to them. They have gone to the conciliation officer, but, no result was yielded. Hence they have filed their present claims with the prayer that they be reinstated in job with full back wages. They are unemployed since the date of their termination.

Respondent-2 had appeared and filed the W.S. He submits that he had been awarded the tender by the Respondent-1 i.e. South Delhi Municipal Corporation for revenue collection at the **Sangam Cinema Parking** Site vide offer letter dated 20.07.2021. Claimants had approached respondent-1 seeking employment claiming that he had prior experience in parking revenue collection operation. He has employed applicant as a parking boy on a temporary basis. They had to report for their duties and were paid the wages in accordance with the rules & regulations. Claimants were not punctual and regular towards their duty on multiple occasions they failed to report for duty during the time. Moreover they had embezzled the amount collected from parking site and he has refused to deposit the actual and completer revenue. When the management asked the less revenue collection but, did not clearly said and stopped to report duty since May 2022. They submit that claims of the claimants are liable to be dismissed.

During the course of proceedings this tribunal had found that nobody was supervising the works of the claimants from respondent-1 to whom they claimed to be employed through management-2. This fact has also been reflected from the array of the party. The petitioners/claimants had made the party as **M/s SDMC Parking** as well as **M/s Datar Security Service Group. SDMC parking** is not itself is juristic person. Either the claimants should have address the commissioner of the SDMC otherwise there is no office in the name of **SDMC parking** to whom the copies of the claims can be sent.

Record purused. Claims have been filed U/s 2A of the I.D Act. Forty-five days have been passed. No solution can be arrived. Hence, **Sh. Rajnish Sangwan, ALC (C)** had issued certificates of failure. Even the facts revealed that the tender was floated and respondent-2 was awarded the contract for parking. In the parking there is no supervisor at all from the management-1. Management-1 cannot be said to the principle employer by any stretch of any imagination. It appears to be an individual dispute between the claimants and the respondent-2, regarding their service conditions.

To invoke the jurisdiction, the claimants have to prove that they are employees of any official of Central Government.

Section-2 a of I.D Act (hereinafter is called as an Act) define the expression 'appropriate government'.

Appropriate government is the central government in relation to any industrial dispute which pertain to any industry carried on by all under the authority of central government.

Section-2(a)(1) of the Act give the detail expression of covering the industry which falls under the definition of central government controlled industry. It is reproduced

'in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labor Board established under Section 5A of the Dock workers (Regulation of Employment) Act, 1948 (9 0f 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 19560] or the Employees State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees Provident Fund and Miscellaneous provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation establish under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporations of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporation Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], [the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or [an air transport service, or a banking or an insurance company,] a mine, an oil field,] [a cantonment Board,] or a [major port, any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to established by or under any law made by parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government]

In these circumstances, claims being devoid of any merits stand dismissed. Awards are accordingly passed. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

ATUL KUMAR GARG, Presiding Officer

Date: 30.04.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1177—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स इंडियन इंडस्ट्रियल सिक्योरिटी सर्विसेज प्राइवेट लिमिटेड, रेलवे सीमेंट साइडिंग, शकूर बस्ती, नई दिल्ली; सेंट्रल रेल वेयरहाउसिंग कंपनी, शकूर बस्ती, दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री परविंदर कुमार, कामगार , द्वारा - दिल्ली प्रदेश फैक्ट्री एवं दैनिक मजदूर कांग्रेस (पंजीकृत), 6 वेस्ट पटेल नगर, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट(संदर्भ संख्या 318/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-113- आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1177.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 318/2017) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Indian Industrial Security Sevice Pvt. Ltd., Railway Cement Siding, Shakur Basti, New Delhi ; Central Rail Warehousing Company, Sakurbasti, Delhi, and Shri Parvinder Kumar ,Worker, Through -Delhi Pradesh Factory & Daily Labour Congress (Regd.),6 West Patel Nagar, New Delhi,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42025/07/2024-113-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI – 1
ROOM No. 207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

DID No.318/2017

Shri Parvinder Kumar S/o Shri Swaroop Singh,
Through Delhi Pradesh Factory & Daily Labour Congress(Regd.),
627, Baba Faridpuri, West Patel Nagar,
New Delhi-110008.

Claimant…

Versus

1. M/s Indian Industrial Security Sevice Pvt. Ltd.,
C.R.C.W. Godown No.2,
Railway Cement Siding,
Shakur Basti, New Delhi.

2. Central Rail Warehousing Company,
Sakurbasti, Delhi.

Management…

AWARD

1. This is an application Under Section 2A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 04.11.2016 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated form his service on 04.11.2016 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition.

2. Management No.2 is not appearing since long therefore they are proceeded ex-parte. However, Management no.1 appeared and filed the rebuttal written statement. Thereafter, rejoinder filed by the claimant and issues were framed. Case was listed for claimant evidence for 04.12.2019. After that, claimant evidence was not filed. And after that, none appeared on behalf of the claimant nor his A/R appeared despite providing a number of opportunities, claimant have not appeared to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 14.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1178—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एमटीएनएल, किदवई भवन, जनपथ, नई दिल्ली**; **मेसर्स साई फ्यूचर इंडिया प्राइवेट लिमिटेड**, 197-198, **नोएडा विशेष आर्थिक क्षेत्र, दादरी रोड, नोएडा**, के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री चन्द्र शेखर वर्मा, कामगार, द्वारा-श्री एस.के.दास, एडवोकेट चैंबर नं.** 203, **तीस हजारी कोर्ट, नई दिल्ली,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1नई दिल्ली पंचाट(संदर्भ संख्या 216/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-111-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1178.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 216/2017) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **MTNL, Kidwai Bhawan, Janpath, New Delhi; M/s Sai Future India Pvt. Ltd., 197-198, Noida Special Economic Zone, Dadri Road, Noida, and Shri Chandra Shekhar Verma, Worker, Through-Shri S.K. Das,**

Advocate Chamber No.203,Tis Hazari Court, New Delhi, which was received along with soft copy of the award by the Central Government on 11.06.2024

[No. L-42025/07/2024-111-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

Before the Justice Vikas Kumar Srivastava (Retd.) Presiding Officer, Government of India Ministry of Labour & Employment, Central Government Industrial Tribunal Cum – Labour Court-I, New Delhi

DID No.216/2017

Sh. Chandra Shekhar Verma,
Through Sh. S.K. Das,
Advocate Chamber No.203,
Gajanand Block, Tis Hazari Court,
New Delhi-110054

Workman…

Versus

1. MTNL, Kidwai Bhawan,
Janpath, New Delhi-110001.

2. M/s Sai Future India Pvt. Ltd..,
197-198, Noida Special Economic Zone,
(NSEZ), Phase 2, Dadri Road,
Noida-201305

Management…

AWARD

1. This is an application Under Section 2A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 07.10.2016 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated form his service on 07.10.2016 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition. Management no.2 also filed rebuttal written statement.

2. Management No.1 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 03.12.2018. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 14.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1179—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एमटीएनएल, किदवई भवन, जनपथ, नई दिल्ली; मेसर्स साई फ्यूचर इंडिया प्राइवेट लिमिटेड**, 197-198, **नोएडा विशेष आर्थिक क्षेत्र, दादरी रोड, नोएडा**, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री संत कुमार, कामगार, द्वारा-श्री एस.के.दास, एडवोकेट चैंबर नं. **203,** तीस हजारी कोर्ट, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय-1नई दिल्ली पंचाट(संदर्भ संख्या 215/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-112- आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1179—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 215/2017) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **MTNL, Kidwai Bhawan, Janpath, New Delhi ;M/s Sai Future India Pvt. Ltd.,197-198, Noida Special Economic Zone, Dadri Road, Noida, and Shri Sant Kumar, Worker, Through- Shri S.K. Das, Advocate Chamber No.203,Tis Hazari Court, New Delhi,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42025/07/2024-112-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

Before the Justice Vikas Kumar Srivastava (Retd.) Presiding Officer,Government of India Ministry of Labour & Employment,Central Government Industrial TribunalCum – Labour Court-I, New Delhi

DID No. 215/2017

Sh. Sant Kumar,
Through Sh. S.K. Das,
Advocate Chamber No.203,
Gajanand Block, Tis Hazari Court,
New Delhi-110054

Workman…

Versus

1. MTNL, Kidwai Bhawan,
   Janpath, New Delhi-110001.
2. M/s Sai Future India Pvt. Ltd..,
   197-198, Noida Special Economic Zone,
   (NSEZ), Phase 2, Dadri Road,
   Noida-201305

Management…

AWARD

1. This is an application Under Section 2A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 07.10.2016 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated form his service on 07.10.2016 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition. Management no.2 also filed rebuttal written statement.

2. Management No.1 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence for 03.12.2018. After that, none appeared on behalf of the claimant despite providing a number of opportunities or appeared to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 14.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1180—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स जीएमआर एनर्जी लिमिटेड, न्यू शक्ति भवन, बिल्डिंग नंबर 302, टर्मिनल 3 के सामने, आईजीआई एयरपोर्ट, नई दिल्ली; मेसर्स एवन फैसिलिटी मैनेजमेंट सर्विस प्राइवेट लिमिटेड, मोहन को-ऑपरेटिव, इंडस्ट्रियल एस्टेट, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री गजराज सिंह, कामगार, द्वारा-अखिल भारतीय आम मजदूर ट्रेड यूनियन, गिरी नगर, कालकाजी, नई दिल्ली,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1नई दिल्ली

पंचाट (संदर्भ संख्या 170/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-110- आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1180.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 170/2018) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s GMR Energy Ltd., New Shakti Bhawan, Building No. 302,Opposite Terminal 3, IGI Airport, New Delhi ; M/s Avon Facility Management Service Pvt. Ltd., Mohan Co-operative, Industrial Estate, New Delhi, and Shri Gajraj Singh , Worker, Through - All India General Mazdoor rade Union, Giri Nagar, Kalkaji, New Delhi,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No.L- 42025/07/2024-110-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI – 1 ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

DID No.170/2018

Shri Gajraj Singh S/o Shri Raja Ram,
Through C/o All India General Mazdoor
Trade Union (Registration No. 3025) Attack
170, Bal Mukund Nagar, Giri Nagar,
Kalkaji, New Delhi-110019 Claimant…

Versus

1. M/s GMR Energy Ltd.,
New Shakti Bhawan, Building No. 302,
Opposite Terminal 3, IGI Airport,
New Delhi-110037

2. M/s Avon Facility Management Service Pvt. Ltd.,
B-1/I, 1st Floor Mohan Co-operative, Industrial Estate,
New Delhi-110044

Management…

AWARD

1. This is an application Under Section 2A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 27.08.2015 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated form his service on 27.08.2015 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition. Management no.1 also filed rebuttal written statement.

2. Management No.2 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 07.05.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 14.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1181—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अपर महाप्रबंधक (ईएमडी/एमएमडी), एनटीपीसी लिमिटेड, बदरपुर पावर स्टेशन, एनटीपीसी बीटीपीएस, बदरपुर, दक्षिण दिल्ली, नई दिल्ली; मेसर्स शिवानी इंजीनियरिंग एंड कंस्ट्रक्शन कंपनी, ईबी-41, एनसीपीपी, विद्युत नगर, गौतमबुद्ध नगर, के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती उमा देवी, कामगार , के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट(संदर्भ संख्या 210/2023) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-109- आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1181—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 210/2023) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Additional General Manager (EMD/MMD), NTPC Ltd., Badarpur Power Station, NTPC BTPS, Badarpur, South Delhi,New Delhi; M/s Shivani Engineering & Construction Co., EB-41, N.C.P.P., Vidyut Nagar, Gautam Budh Nagar, and Smt. Uma Devi ,Worker,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42025/07/2024-109-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1, NEW DELHI.

ID No.210/2023

Smt. Uma Devi W/o Late Sh. Brijesh Singh,
R/o C-515, Tajpur Pahari, Ra, Siddha Camp,
Badarpur, South Delhi,
New Delhi-110044

Claimant…

Versus

1. Additional General Manager (EMD/MMD), NTPC Ltd.
Badarpur Power Station, NTPC BTPS, Badarpur South Delhi,
New Delhi-110044.

2. M/s Shivani Engineering & Construction Co.,
EB-41, N.C.P.P., Vidyut Nagar,
Gautam Budh Nagar-201008

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.ND. 96(28)/ID(2A)2023-DYCLC dated 19.09.2023 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the action of the management of M/s Shivani Engineering & Construction Co. to consider 02.09.2019 as date of exit form service of the workman Shri Brijesh Singh can be termed as illegal dismissal/termination/retrenchment. If yes, whether the demand of the applicant to declare date of death of her husband Shri Brijesh Singh i.e. 10.10.2019 as true and legal date of discontinuation from the employer with reason death 'while in service' is fair, legal and justified. If yes, then for what relief the applicant Smt. Uma Devi is entitled to?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 14.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1182—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स सचिव, डीडीए, सिरीफोर्ट स्पोर्ट्स कॉम्प्लेक्स, अगस्त क्रांति मार्ग, खेल गांव, नई दिल्ली; मेसर्स इंटरनेशनल (पूर्व सैनिक) सुरक्षा सेवा, टैगोर गार्डन एक्सटेंशन, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री लव कुमार, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 39/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल – 42012/184/2014-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1182.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2015) of the **Central Government Industrial Tribunal cum Labour Court – I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary, DDA , Sirifort Sports Complex, August Kranti Marg, Khel Gaon, New Delhi ; M/s International (Ex-Servicemen) Security Service, Tagore Garden Ext., New Delhi, and Shri Lav Kumar, Worker,** which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42012/184/2014-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE JUSTICE VIKAS KUMAR SRIVASTAVA (RETD.) PRESIDING OFFICER, GOVERNMENT OF INDIA MINISTRY OF LABOUR & EMPLOYMENT, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM – LABOUR COURT-I, NEW DELHI

ID No. 39/2015

Sh. Lav Kumar S/o Late Sh. Laxman,
C/o 1800/9, Govindpuri Ext.,
Main Road, Kalkaji,
New Delhi-110019

Workman…

Versus

1. The Secretary,
   DDA,
   Sirifort Sports Complex,
   August Kranti Marg, Khel Gaon,
   New Delhi-110049
2. M/s International (Ex-Servicemen) Security Service,
   A-/3B, Janta (Near Central School),
   Tagore Garden Ext.,
   New Delhi-110027

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-42012/184/2014-IR(DU)) dated 12.01.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the action of the management of International (Ex-Servicemen) Security Services, Contractor in terminating the services of the workman Sh. Lav Kumar w.e.f. 24.05.2014 can be construed as termination of employment by DDA presuming the entity of contractor as sham and camouflage? If not what relief the workman concerned is entitled to*?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Claim statement filed, rebuttal written statement filed on behalf of the management no. 1.

3. Management No.2 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 16.07.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 14.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1183—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सचिव, डीडीए, सिरीफोर्ट स्पोर्ट्स कॉम्प्लेक्स, अगस्त क्रांति मार्ग, खेल गांव, नई दिल्ली; मेसर्स नीति एंटरप्राइजेज, किसान विहार, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री छवि लाल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट(संदर्भ संख्या 40/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.06.2024 को प्राप्त हुआ था।

[सं. एल–42012/185/2014-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th June, 2024

S.O. 1183.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2015) of the Central Government Industrial Tribunal cum Labour Court –I New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Secretary, DDA , Sirifort Sports Complex, August Kranti Marg, Khel Gaon, New Delhi ;M/s Niti Enterprises, Kisan Vihar, New Delhi, and Shri Chhavi Lal, Worker, which was received along with soft copy of the award by the Central Government on 11.06.2024.

[No. L-42012/185/2014-IR (DU)]

DILIP KUMAR, Dy. Secy.

ANNEXURE

BEFORE THE JUSTICE VIKAS KUMAR SRIVASTAVA (RETD.) PRESIDING OFFICER, GOVERNMENT OF INDIA MINISTRY OF LABOUR & EMPLOYMENT, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM – LABOUR COURT-I, NEW DELHI

ID No. 40/2015

Sh. Chhavi Lal S/o Sh. Ghanshyam,
C/o 1800/9, Govindpuri Ext.,
Main Road, Kalkaji,
New Delhi-110019

Workman…

Versus

1. The Secretary,
   DDA,
   Sirifort Sports Complex,
   August Kranti Marg, Khel Gaon,
   New Delhi-110049
2. M/s Niti Enterprises,
   L-88, Kisan Vihar,
   New Delhi-110041

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-42012/185/2014-IR(DU)) dated 12.01.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the action of the management of NITI Enterprises, Contractor in terminating the services of the workman Sh. Chhavi Lal w.e.f. 01.05.2013 can be construed as termination of employment by DDA presuming the entity of contractor as sham and camouflage? If not what relief the workman concerned is entitled to*?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Claim statement filed, rebuttal written statement filed on behalf of the management no. 1.

3. Management No.2 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 16.07.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 14.05.2024

नई दिल्ली, 12 जून, 2024

का.आ. 1184—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय, हैदराबाद के पंचाट (पहचान संख्या 21/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/06/2024 को प्राप्त हुआ था।

[सं. एल–22013/01/2024-आईआर (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 12th June, 2024

S.O. 1184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 21/2010) of the Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on 11/06/2024.

[No. L-22013/01/2024-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 10th the day of May, 2024

INDUSTRIAL DISPUTE L.C.No. 21/2010

Between:

Sri S. Satyanaryana Murthy,
S/o Gopalakrishna Charyulu,
C/o Smt. A. Sarojana, Advocate
Flat No.G7, Ground Floor,
Rajeshwari Gayatru Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad. .....Petitioner

AND

1. General Manager,
The Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri,
Adilabad District.
2. The Superintendent of Mine,
Kasipeta Mine,
M/s. Singareni Collieries Company Ltd.,
Mandamarri, Adilabad District. ....Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

Sri S. Satyanarayana Murthy, who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., with a prayer to declare the dismissal order dated 4.11.2007 imposed by Respondent as illegal and seeking for reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. T**he claim of Petitioner in brief is as follows**:

It is submitted that Petitioner was appointed as Badli Filler in the 1st Respondent company and from the date of his appointment he was regular to his duties till 11.12.2000. Further, it is submitted that Petitioner was transferred from SMG-3 Incline to KK-2 Incline. Unfortunately due to Petitioner's ill-health and other family problems, he could not join duty at SMG-3 Incline, and the Petitioner's wife took him to various hospitals for better medication and his early recovery from the mental illness, but in vain. However, after his recovery, Petitioner submitted representation dt.29-8-2005 requesting the authorities to permit him to join duty. But he was not permitted to join. While so, a charge sheet dt.23.1.2005 was issued to the Petitioner, alleging that the Petitioner remained absent from 12.12.2000 to 23.1.2005. On receipt of the same Petitioner submitted his explanation on 29.8.2005, explaining about his illness and other family problems. However without considering any of the submissions made by the Petitioner, an enquiry was conducted with a predetermined notion. During the enquiry, Petitioner was not given any opportunity much less valid in nature. Basing on such lop sided enquiry, Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, a show cause notice dated 1.12.2006 was issued to which Petitioner has submitted his reply on 18.12.2006. However, without considering the merits of submissions made by the Petitioner, he was dismissed. It is submitted that, during the course of enquiry, Petitioner categorically pleaded that his inability to perform the duties, during period mentioned in the charge sheet, was only on account of his illness and other family problems, but not otherwise. The whole enquiry was conducted in a routine and mechanical manner with a predetermined intention to somehow or the other, put the Petitioner to extreme hardship of dismissal from service.

Before commencement of enquiry, the procedure of enquiry was not explained to the Petitioner and he was not offered the assistance of any defense assistance. As the Petitioner was not aware of procedure of enquiry, he could not participate the enquiry effectively, resulting in issuance of impugned order of dismissal. The procedure of enquiry was explained, he could have insisted the Enquiry Officer to mark the documents on his behalf i.e., the prescriptions and other documents to establish the factum of his continued illness. Though, the Petitioner has shown all the prescriptions and other records pertains to his continued ill-health, none of them were marked by the Enquiry Officer and at the end of enquiry, submissions of the Petitioner were ignored on the pretext that Petitioner could not substantiate his claim with relevant proofs. As a result of the above improper conduct of enquiry, Petitioner is put to great prejudice, which resulted in issuance of impugned order of dismissal. Before issuing the impugned order of dismissal, approval of competent authority was not obtained, as per the standing orders. No opportunity was given to the Petitioner to produce witnesses on his behalf. Had any opportunity was given to the Petitioner to produce witnesses on his behalf, after explaining the procedure of enquiry, Petitioner could have produced witnesses on his behalf, thereby the necessity to issue the impugned order of dismissal could have been avoided. Neither the findings of the Enquiry Officer, nor the impugned order does give any reasons, much less valid in nature. It is further submitted that the Enquiry Officer grossly erred in holding the charges as proved, ignoring the submissions of the Petitioner. Neither the Enquiry Officer, nor the Disciplinary Authority considered the submissions made by the Petitioner before arriving at a conclusion. Neither the proceedings of enquiry were conducted in the language known to the Petitioner, nor the same was explained in the language known to the Petitioner. Having drafted the proceedings, the signatures of the Petitioner were obtained. The conduct of the Enquiry Officer shows his predetermined nature. The Enquiry Officer relied upon the evidence of irrelevant witnesses who have no personal knowledge of the charge alleged against the Petitioner. Enquiry Officer relied upon several documents to substantiate the charges, none of those documents were either shown or furnished to the Petitioner either before or during the course of enquiry. The findings of the Enquiry Officer are contrary to the evidence on record. The findings of the Disciplinary Authority are outside the scope of charge sheet. The submissions of the Petitioner during the enquiry remained un -rebutted. It is an established principle of law that, un-rebutted evidence need to be proved specifically and the same is deemed to have been accepted. Unfortunately, without considering any of the above submissions, the Petitioner was dismissed from service w.e.f. 14.11.2007 vide office order dt.4.11.2007. Therefore, it is prayed to declare the impugned order dated 4.11.2007 illegal and invalid as per the provisions of law.

3. **The Respondents filed counter denying the averments of the claim statement of the Petitioner as under**:

The present petition has been filed by the Petitioner who is an unauthorized absentee praying the Hon'ble Court to declare the proceedings No.MMR/PER/D/072/5835, dated 04.11.2007 issued by the Respondent as illegal, arbitrary and set aside the same. It is submitted that the Petitioner was dismissed from service on proved charges of absenteeism after conducting a detailed domestic enquiry duly following the principles of natural justice. It is submitted that the Petitioner was initially appointed in the Respondent's Company on 31.03.2000 as Badli filler. The Petitioner continued to be in the post of Badli filler only from 31.03.2000 to the date of dismissal i.e. on 14.11.2007, without getting regularized as Coal filler, which clearly indicates that the Petitioner was not regular to duties. It is true that the Petitioner was initially working at SMG.3 Incline and was later transferred to KK.2 Incline vide office order No.P/MM/4/4/00/3741, dated 30.08.2000 and he was relieved at SMG.3 Incline vide letter No.SMG.3/10/00/2375, dated l1.12.2000 but he did not report for duty at KK.2 Incline and remained absent to duties on his own without giving any information to the Unit authorities or to the area authorities about his alleged ill health and also about his alleged incapability to attend to duties. The Petitioner was appointed on 31.03.2000 and upto 31.12.2000 i.e. in 9 calendar months against total working days of 233, the Petitioner had put in just 67 actual attendances when he was to put in 16 musters per calendar month and still claims that he was regular to his duties till 11.12.2000. That due to his ill health and family problems he could not join duty at SMG.3 and that his wife took him to various hospitals is incorrect. It is further submitted that the Respondent company has established Dispensaries, Area Hospitals and also Main Hospitals with sophisticated medical equipment, Doctors and Para-medical staff to extend medical aid to its employees and their family members and it also refers the patients to Corporate Hospitals for better medical aid as per necessity. If the Petitioner was really suffering from ill health, as an employee of the Respondent company, it becomes his primary responsibility to obtain sanction of leave or leave on loss of pay or he should report sick in colliery hospital. Without complying the laid down procedures and without substantiating his alleged ill health with documentary evidence, the Petitioner cannot claim that due to ill health he could not report for duty and could not attend duties. The allegation of the Petitioner that after recovery he submitted representation dated 29.08.2005 for permitting him to join duty but he was not permitted to join duty is totally incorrect. If he was not allowed for duty he could not have put in 26 musters during the year 2005. The Petitioner had remained absent from duty with effect from 12.12.2000 and he continued to remain absent during the years 2001. 2002, 2003, 2004 also and when records were verified at KK.2 Mine this had come to the notice of the Unit Authorities. This act of absenteeism on the part of the Petitioner constituted misconduct under Company's approved Standing Orders which reads as under: "25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave..." Hence a charge sheet No.MMR/KKZR-008/259, dated 23.01.2005 was issued to Petitioner for his absenteeism during the period 12.12.2000 to 23.01.2005. The Petitioner acknowledged receipt of the charge sheet and he submitted his

written explanation dated 29.08.2005 stating that he received the charge sheet dated 23.01.2005 on 26.06.2005 and that he was transferred from SMG.3 Incline to KK.2 Incline but could not join duty due to domestic troubles and also worries which upset him mentally. The Petitioner failed to substantiate his plea with documentary evidence and hence an enquiry into the charge levelled against the Petitioner was conducted on 29.08.2005 wherein the Petitioner had participated fully and he was given every opportunity to defend his case. The Enquiry Officer held the enquiry proceedings following all the principles of natural justice. During the course of enquiry, the Petitioner stated before the Enquiry Officer admitted that he was transferred from SMG.3 to KK.2 Incline but he could not join duty due to domestic troubles and also due to worries. He categorically admitted his mistake of remaining absent to duties unauthorizedly and assured to be regular to duties. He did not produce any evidence in support of his alleged ill health. On the basis of evidence on record the Enquiry Officer held the Petitioner guilty of the charge levelled under Company's Standing Orders No.25.31. The other allegation that during the enquiry, the Petitioner was not given any opportunity much less valid in nature is baseless since the Enquiry Officer at the commencement of the enquiry proceedings had explained the Petitioner the enquiry procedure, offered him the services of defense assistant. He was provided the opportunity to cross examine the management witnesses also. The Petitioner, for the reasons best known to him, did not avail any of these offers. He on his own pleaded guilty of the charge leveled. On behalf of the Respondents, the paid pay sheets and H-Registers (leave registers) for the period 2001, 2002, 2003, 2004, 2005 were produced while the Petitioner did not produce any documentary evidence in support of his alleged ill health/domestic problems. The documentary evidence on behalf of Respondents clearly established the fact that the Petitioner remained absent from duties since 12.12.2000 to the date of preparation of charge sheet i.e. 23.01.2005. It is submitted that on the basis of lop sided enquiry, Enquiry Officer held the charge as proved is also baseless. The Enquiry Officer has submitted report with a finding that the charge leveled against the Petitioner is proved. A copy of the enquiry report and proceedings was supplied to the Petitioner vide letter No.MMR/PER/D/072/6641, dated 01.12.2006 to enable him to make his written representation against the findings of the Enquiry Officer. The Petitioner on receipt of letter dated 01.12.2006 with its enclosures submitted his written representation dated 18.12.2006 stating that suddenly he fell bed sick with mental disorder but at this stage also he did not substantiate his alleged problems with documentary evidence and he did not dispute either the enquiry proceedings or the findings of the Enquiry Officer. Now, after a lapse of nearly 3 years from the date of conduct of enquiry, the Petitioner is making false allegations. The onus of proving the alleged ill heath, domestic problem etc., rests with the Petitioner and without establishing the same with valid evidence, the Petitioner simply alleging that they were not considered. His further allegation that his dismissal from services is wholly illegal, arbitrary; violative of principles of natural justice is wrong. The Petitioner was appointed on 31.03.2000 and in the possible 233 working days he had put in 067 musters only and had not put in even single muster during the years 2001, 2002, 2003, and 2004 and had just put in 026 musters during the year 2005. Even after issuance of charge sheet also he failed to improve his attendance by being regular to duties. In the year 2006 he had put in 101 musters and upto 14.11.2007 he put in 76 musters. He was an underground employee and required to put in 190 musters per calendar year. Though the attendance of the Petitioner was poor for over 7 successive calendar years, the Petitioner claims that there was no fault on his part and he should be continued on the rolls of the Respondent Company without imposing penalty. That the whole enquiry was conducted in routine and mechanical manner with a predetermined intention to some how or the other put the Petitioner to extreme hardship of dismissal from service, is baseless. It is submitted that the domestic enquiry was conducted by giving full and fair opportunity to the Petitioner to defend his case during the course of enquiry. The Petitioner himself admitted that he remained absent from duties and accepted that this act on his part as a mistake. Further the Petitioner did not produce any documentary evidence in support of his claim of alleged ill health, domestic problems etc., during the course of enquiry. The Enquiry Officer conducted the proceedings following all the principles of natural justice and provided every opportunity to the Petitioner to defend his case during the course of enquiry and it was the Petitioner who refused to accept any of the opportunities given to him by way of cross examining the Management Witnesses, submitting documentary evidence and taking the assistance of defense assistant during the enquiry. It is further submitted that the Respondent company never acts with a predetermined intention against any of its employees. The Respondent No.l had gone into the details of the charge leveled, enquiry proceedings and also the enquiry report and at the same time scrutinized the past record of the Petitioner. Despite the fact that the attendance of the Petitioner was very poor from 0l.04.2000 to 30.04.2007, with a view to provide an opportunity to the Petitioner to enable him to improve his attendance and performance, he was counselled on 29.05.2007 by a Committee wherein his wife too participated and he was given 03 months time from 01.06.2007 vide letter No.MMR/PER/D/072/3090, dated 09.06.2007. In the four months he made no effort to rectify his mistake himself. He was expected to put in 190 musters per calendar year as an underground employee, but he had put in just 81 musters from 01.01.2007 to 14.11.2007 which is far below the satisfaction mark. This explains the reverence the Petitioner had towards his job/employment and also explains the fact that he did not realize his mistake. The Enquiry Officer had explained the enquiry procedure at the commencement of the proceedings and the Petitioner having satisfied, affixed his signature on the proceedings without any objection or protest. At no point of time either during the course of enquiry or when he was supplied copy of enquiry report and proceedings, the Petitioner raised any objections and after a lapse of 3 years from the date of conduct of enquiry, the Petitioner is making false allegations only to make out a case in his favour. The Petitioner did not produce any prescriptions and other records pertaining to his alleged continued ill health and hence the question of marking them by the Enquiry Officer does not

arise. This is an after thought of the Petitioner. It is submitted that in the penalty order, the reasons have been specified for which the Petitioner was charge sheeted and under which clause of the approved standing orders of the Company his act constituted misconduct and also narrated the subsequent developments and causes leading to the imposition of the penalty of dismissal. The Petitioner neither disputed the enquiry proceedings, nor objected for the presentation of the Office Superintendent and Pay sheet Clerk during the course of enquiry before the Enquiry Officer on behalf of Respondent and did not cross examine the Management witness when opportunity was extended to him. If the Petitioner is the sole bread winner, he should have realized his responsibilities towards his family members and also as an employee in Respondent company should have attended to duties regularly, at least when he was counseled. The production results will depend upon the over all attendance and performance of each and every individual. If any one remains absent, without prior leave or without any justified cause, the work to be performed gets effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill up, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. That is the reason why the Respondent's Company is compelled to take action against the unauthorized absentees. In the instant case, the Petitioner is one such unauthorized absentee and he had put in not even single muster from 12.12.2000 to 23.01.2005. He was dismissed after conducting a fair enquiry, giving full opportunity to the Petitioner to defend his case and providing him an opportunity of 3 months time to improve his attendance. The Petitioner failed to rectify his mistake. As such, the Respondent's Company was constrained to dismiss the Petitioner for unauthorized absenteeism with effect from 14.11.2007 vide dismissal order No.MMR/PER/ D/072/ 5835 dated 04.11.2007. Hence it is prayed to dismiss the claim of the Petitioner.

4. **On the basis of rival pleadings of both the parties following points emerge for determination in this case:-**

I. Whether the Departmental enquiry held against the workman is legal and valid?

II. Whether the action of the Respondent M/s. Singareni Collieries Company Ltd., in terminating the services vide order dated 4.11.2007 of the workman is legal and justified?

III. To what relief the Petitioner workman is entitled for?

FINDINGS:-

5. **Point No.I**:-The validity of domestic enquiry held against the workman has been decided vide order dated 24.4.2023 and it has been held legal and valid.

This Point is answered accordingly.

6. **Point No.II**:-Admittedly, Petitioner was working as badly filler in the Respondent Company and he remained absent from duty without any sanctioned leave or sufficient cause from 12.12.2000 to 23.1.2005 in contravention of Standing Orders No.25.31 of the Company. He was served with charge sheet and Departmental Enquiry was conducted against the workman and after completion of the enquiry he was found guilty of the breach of Standing Orders No.25.31 Respondent vide order dated 4.11.2007 imposed the punishment of dismissal of the Petitioner from employment. Petitioner Workman has taken the plea in his claim petition that due to illness and other family problems he remained absent from duty from 12.12.000 to 23.1.2005. Petitioner submitted that Although he had submitted his explanation dated 29.8.2005 explaining about his illness but the Respondent did not consider his ground and without considering the merits of submission made by the workman he was dismissed from service w.e.f. 14.11.2007 vide office order dated 4.11.2007. Further, workman has also challenged the dismissal order dated 4.11.2007 on the ground that the first Respondent has failed to apply his mind independently while issuing his termination order dated 4.11.2007 and Respondent did not dwell into the alleged misconduct and the punishment proposed to be inflicted upon the workman. Further, it is submitted that finding of the Disciplinary Authority is outside the scope of the charge sheet and the impugned order of dismissal dated 4.11.2007 is liable to be treated as bad in law.

7. Petitioner has taken the plea that due to his illness and family problems, he could not join the duty for the period alleged in charge sheet. I have gone through the record of the Departmental Enquiry. In the enquiry, in his explanation dated 29.8.2005, he has mentioned the reason for his absence that he was transferred from SMG 3 incline to KK2 Incline, but he could not join on duty due to domestical troubles and also due to worries because he was mentally upset. Therefore, reason for his absence from duty taken in the claim statement i.e., due to illness and family problems is quite contradictory and different to the reason mentioned in explanation dated 29.8.2005 filed in reply to the charge sheet. Moreover, during the enquiry the statement of the workman was recorded and in his statement Petitioner has admitted that he could not join the duty due to domestic troubles and also due to worries. Thus, the plea taken by the Petitioner for his absence from duty in domestic enquiry and plea of illness taken by Petitioner in the claim petition are quite different. Moreover, Petitioner has not produced any document or medical prescription of illness. It seems that Petitioner has taken the plea of illness as an after thought and the same is not

acceptable in the absence of any cogent and reliable documentary evidence. However, the Petitioner did not produce any documentary evidence to substantiate his alleged ill-health and other reasons put forward by him. He should have reported sick in the Colliery Hospital which he did not do. Further, he never communicated about his inability to attend the duties because of his alleged ill health and domestic problems to the unit authorities. It was also obligated upon the Petitioner workman to take sanctioned leave standing to his credit or got sanctioned loss of pay leave by the competent authority but he did not do so. Therefore, in such circumstances, the plea of the Petitioner regarding inability to attend the duties is not sustainable.

8. Secondly, workman has also challenged his dismissal order dated 4.11.2007 on the ground that 1st Respondent failed to apply his mind independently while issuing the dismissal order dated 4.11.2007. I have gone through the dismissal order passed by Disciplinary Authority. the order in question goes to reveal that the Disciplinary Authority while passing the order has taken into consideration all the facts and evidence in the enquiry proceeding as well as report of Enquiry Officer. Further, it has been mentioned in the dismissal order dated 4.11.2007 that the workman was counselled on 29.5.2007 and was given the time from 1.6.2007 vide letter dated 9.6.2007 to enable him to improve his attendance and performance during the observation period. But his attendance was found to be not satisfactory during observation period also. Thus, Disciplinary Authority has passed order dated 4.11.2007 of dismissal of workman after taking into consideration of all facts and evidence of enquiry proceeding and report. Furthermore, after counseling the workman Respondent has accorded an opportunity of improving his attendance and performance , but he did not avail it to improve his attendance and performance. This conduct of Petitioner goes to show that Petitioner was lacking devotion to his duty. Therefore, in such circumstances, the Disciplinary Authority has no other option except to pass order of dismissal of Petitioner from the service.

9. Further more, Respondent contended that Respondent Company employed more than 65,000 persons, which includes workmen, executives and supervisors. The production results will depend upon the over all attendance and performance of each and every individual. It is contended that, if any one remains absent, without prior leave or without any justified cause, the work to be performed gets effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill up, and there will no proper planning and already planned schedules get suddenly disturbed without prior notice. That is the reason why the Respondent's Company is compelled to take severe action against the unauthorized absentees. In this instant case, the Petitioner was unauthorizedly absent and has not put in even a single muster from 12.12.2000 to 23.1.2005. He was dismissed after conducting enquiry affording opportunity and considering the opportunity to improve his attendance. The Petitioner failed to rectifies his mistake. After issuance of the charge sheet he had put in 025, 101 and 081 musters during the years 2005, 2006 and 2007 is also not satisfactory as he had put in 067, NIL, NIL, NIL, NIL, 025, 101 and 081 musters only. As such, the Respondent's Company was constrained to dismiss the Petitioner for unauthorized absenteeism vide dismissal order dated 4.11.2007. further, the Respondent has relied upon the decision of Hon'ble Supreme Court of India wherein the Hon'ble Supreme Court of India have held that unauthorized absenteeism cannot be condoned and the Management is right in terminating the services of the Petitioner. In this context I would like to refer few decisions of the Hon'ble Supreme Court of India which are discussed as below:-

In this context Hon'ble Supreme Court of India has laid down the principle in the case of **State of U.P. V. Ashok Kumar Singh 1996 (1) SCC 302, wherein the Apex Court had held:-**

"Having notices the fact that the first respondent has absented himself from duty without level on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

Similarly, in the case of **North Eastern Karnataka R.T. Corpn. v. Ashappa decided on 12 May, 2006 wherein, the Apex Court had held:-**

"*Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The Appellant runs a fleet of buses. It is a statutory organization. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The Respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the Respondent herein has to be treated lightly."*

In another case, **Delhi Transport Corporation v. Sardar Singh [(2004) 7 SCC 574], the Apex Court held**:
"11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only

exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised."

Therefore, in view of law laid down by Hon'ble Apex Court in the case of absentee employee, it is seen in the present matter that the Petitioner has been absent from duty unauthorisedly without sanction of leave, for an inordinate delay of five years, without any justifiable reason that amounts to grave and serious misconduct and Respondent has rightly passed dismissal after affording hearing opportunity to the Petitioner.

10. Thus, in view of the law laid down by the Hon'ble Supreme Court of India in the present matter Petitioner has remained absent from duty for an inordinate long period of almost five years without sanctioned leave or intimation. Further, he could not produce any plausible explanation for his unauthorized absence from duty. Therefore, such conduct of the Petitioner appears to be nothing but sheer negligence and lack of interest towards the devotion of duty. Therefore, I am of the firm opinion that in such circumstances like in the present matter, Respondent Management rightly has passed the dismissal order of the Petitioner from the service.

11. Further, as far as the jurisdiction of the Tribunal of judicial view of the dismissal order passed by Respondent Authority is concerned in this context Hon'ble Supreme Court of India in the State of U.P. vs. Sheo Shanker Lal Srivastava and Others [(2006) 3 SCC 276], has laid down the principle that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment unless it is found to be shocking to one's conscience.

In State of U.P. vs. Sheo Shanker Lal Srivastava and Others [(2006) 3 SCC 276], Hon'ble Apex Court have held:-

"the Industrial Courts or the High Courts would not normally interfere with the quantum of punishment imposed upon by the Respondent stating: "It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment unless it is found to be shocking to one's conscience."

Further, in the case of **Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay, the 2022 LLR page 126, wherein the Hon'ble Apex Court held:**

"once the Enquiry finding is held to be fair and proper, industrial Tribunal or Labour Court lacks jurisdiction to interfere with the quantum of punishment unless the same is shockingly disproportionate to the gravity of conduct."

Further, **in the case of State of Rajasthan Vs. Heem Singh, Civil Appeal No.3340/2020, (supra) Hon'ble Apex Court have held:-**

"The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary Enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, in the present matter the misconduct of the Petitioner of long absence from duty without sanctioned leave is not of such nature that it needs a lenient view in awarding the punishment by Disciplinary Authority. Therefore, I find no illegality or infirmity in the dismissal order dated 4.11.2007 of Petitioner passed by the Respondent authority.

Thus, Point No.II is answered against the Petitioner and in favour of the Respondent.

12. **Point No.III**: In view of the finding given at Points No.I &II, the workman is not entitled to any relief and the claim of workman is liable to be dismissed.

Thus, Point No.III is answered accordingly.

AWARD

In view of the findings arrived at Points I to III above, it is held that, the action of the Management of M/s. Singareni Collieries Company Ltd., in dismissing the services of the Petitioner Sri S. Satyanarayana Murthy, vide order dated 4.11.2007 is legal and justified. The workman is not entitled to any relief as prayed for. The petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 10th day of May, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 जून, 2024

का.आ. 1185—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट (17 (C) of 2018) प्रकाशित करती है।

[सं. एल -12012/42/2018-IR (B- II)]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (17 (C) of 2018*)* of the *Indus.Tribunal-cum-Labour Court Patna* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12012/42/2018-IR (B.-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER,INDUSTRIAL TRIBUNAL, PATNA.

Reference Case No.:- 17 (C) of 2018

Between the management of the Circle Head, Punjab National Bank, Circle Office, Darbhanga, Laheria Sarai, Commercial Chowk, Darbhanga-846001 and their workman Sri Mohan Kumar S/O- Late Sh. Laxman Sah, C/O- General Secretary, 205, UCO Bank Employee's Association, Saboo Complex, 2nd Floor, Behind Republic Hotel, Exhibition Road, Patna Bihar- 800001.

For the management:-	Sri Ritesh Kumar, Sr. Manager Law.
For the workman:-	Sri B. Prasad, President, Bank Employees Federation, Bihar.
Present:-	**Manoj Shankar** **Presiding Officer,** **Industrial Tribunal, Patna.**

A W A R D

Patna, dt- 19th March, 2024.

By the adjudication order no.- L-12012/42/2018-IR(B-II) New Delhi, dated- 20.11.2018 the Govt. of India Ministry of Labour New Delhi has referred under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as " the Act") the following dispute between the management of Head, Punjab National Bank, Circle Office, Darbhanga, Laheria Sarai, Commercial Chowk, Darbhanga-846001 and their workman Sri Mohan Kumar S/O- Late Sh. Laxman Sah, C/O- General Secretary, 205, UCO Bank Employee's Association, Saboo Complex, 2nd Floor, Behind Republic Hotel, Exhibition Road, Patna Bihar- 800001 for adjudication to this tribunal.

SCHEDULE

" Whether the action of the management of Punjab National Bankto terminate the service of workmen Sri Mohan Kumar, Temporary Peon alleged to have worked from more than 17 years from 1988 was legal & justified? If not, what relief the workman was entitled for?"

2. As per the statement of claim the contention of workman Mohan Kumar is he was orally appointed to discharge the duties of a peon at Jhanjharpur Branch of PNB from 02.01.1988 as there was acute shortage of peon. It is further asserted that workman used to discharge his duties from 10.00A.M to 6.00 P.M regularly and he was performing the duties of opening & closing of Bank's gate, placing register and ledger book to the counters, taking out cash box from the strong room and placing the same in cash department. Some times he also discharged the duties of posting of mails from post office and distribution of bank's letters through banks delivery register, besides this,he also discharged the duties of hospitality works. It is further asserted that the workman has discharged his duties at the instruction of the then branch manager. It is further asserted that the workman has discharged his duties in the said bank from 02.01.1988 to 31.12.2004 uninterruptedly / regularly. His service stood terminated from 01.01.2005 by the bank. It is further asserted that the workman was getting Rs. 150/- per day wage through vouchers. It is further asserted that after termination, workman met with the higher officials of the bank and also filed representation in the year-2005, 2009, 2011, 2012, 2014 & lastly in 2015 but no positive step was taken by the bank then workman raised Industrial Dispute before the ALC (C) Pakur which culminated in reference i.e here before this tribunal. It is further asserted that the workman was discharging his duties as a permanent workman but he did not get equal wages.Moreover, management violated the provision of section-25(F) of the I.D.Act because no notice or notice pay, nor any retrenchment compensation was paid to the workman. It is also asserted that management also resorted unfair labour practice as per schedule-V of the I.D.Act. Accordingly the termination of the workman is covered u/s- 2(OO) of the I.D.Act. Thus workman seeks following reliefs;

(i) Reinstatement as a temporary peon with full back wages;

(ii) Regularisation of services as a peon;

(iii) Payment of some of Rs. 10,000/- for contesting the dispute;

(iv) Any other relief (S) as the tribunal deems fit and proper;

3. On the other hand the management bank also filed written statement and mentioned therein that the claim of the workman is neither maintainable in law nor in facts. It is further asserted that there are stated guidelines for the recruitment for the bank. The bank cannot go beyond the regular recruitment policy. Irregular placement in a post for a need of work cannot be converted into regular employment. It is further asserted that workman Mohan Kumar was engaged in the work of water boy on adhoc basis by the branch office Janjharpur in the year 1988, due to dearth of staff of the bank. Workman Mohan Kumar did some additional work voluntarily in a casual way for which he was adequately compensated. It is further asserted that the claim of the workman is not tenable because his claim is beyond banking rules as per PNB regular recruitment policy for filling the post of in sub-ordinate staff cadre, it has to be filled up by two ways i.e (i) by direct recruitment (ii) by conversion of eligible PTS / FTS into peon. It is further asserted that claimant was just a casual worker whose services were utilized as and when required for which he was duly paid.Since the workman was never appointed through any appointment letter, so no question of termination arises. It is further asserted that the claim of the workman about his duties is totally self designed because bank never took the duties as assigned by the workmanin his statement of claim. Workman was a merely a daily wager on as and when required basis for which he was duly paid. It is further asserted that there was no employer and employee relationship with the workman so there is no question of violation of section 25(T) of the I.D.Act,1947. It is also asserted that the claimant cann't be treated as a workman as per section-2(s) of the Industrial Dispute Act, 1947 because he was just a casual worker whose services were utilized as and when required for which he was duly compensated. Thus claimant is not entitled for any relief.

4. On the basis of rival contentions the following issues are recasted for adjudication;

(i) Whether the claimant of Mohan Kumar comes under the purview of the workman u/s-2(s) of the I.D.Act?

(ii) Whether the claim of Mohan Kumar for filling his representation in the year-2005 to 2015 several times before the higher authorities of the bank is correct before raising this instant dispute?

(iii) Whether the action of the management of Punjab National Bank to terminate the service of workmen Sri Mohan Kumar, Temporary peon alleged to have worked from more than 17 years from 1988 was legal & justified? If not, what relief the workman was entitled for?"

5. In order to establish his claim, the workman side examined two witnesses namely Mohan Kumar the claimant as W.W-1 and Ram Nandan Singh as W.W-2. Besides, oral evidence the workman filed some documents and same the be Extd. as :-

(i) Ext.W-	Letter dt- 18.06.1992 Branch Manager wrote a letter to the Regional Office regarding payment of Mohan Kumar from 31.03.1992to 29.05.1996 (page 3 to 5 visible) but page 5 & 5A not visible.
(ii) Ext.-W/1	Photo copy of Dak delivery register dt- 30.06.2003, toW/1-810.12.2001, 28.05.1992, 05.09.1994, 23.01.1990, 21.09.1995, 07.10.1995, 15.03.1994, 04.09.1995.
(ii) Ext.-W/2	Photo copy of vouchers tagging and signed on the to W/2-10 vouchers register by the then manager from January 1995, Feb.-1995, March-1995, April-1995, May-1995, June-1995, July-1995, August-1995, September-1995, October-1995, December-1995 written by Mohan Kumar.
(ii) Ext.-W/3	Letter dt- 10.01.1996, 04.04.1996 written by to W/3-1R.N.Singh, President, PNB Staff Union, Bihar to Regional Manager, PNB, Darbhanga region, commercial chowk, Lahariasarai, Darbhanga regarding confirmation & permanent absorption of Sri Mohan Kumar, temporary peon.
(ii) Ext.-W/4	Letter dt- 30.01.1997 issued by R.N.Singh, President regarding resolution of executive committee dt- 24.11.1996 for raising Industrial Dispute in the matter of Mohan Kumar.
(ii) Ext.-W/5	Letter dt- 29.05.2015 issued by Mohan Kumar to Circle Head, PNB, Darbhanga and Branch Manager, PNB, Janjharpur.

6. On the other hand management side also examined one witness namely Nand Mohan Das, Senior Manager of PNB as M.W-1. Management side did not file any documents.

7. First of all this tribunal securitizes evidence of workman Sri Mohan Kumar (W.W-1) who deposed before this tribunal on 26.04.2022 that he stated before this tribunal, he was doing work in PNB, Janjharpur branch as a temporary peon from 02.01.1988 to 2004. He also supported the details of the duties as enumerated in his statement of claim. He has also stated that he used to discharge the duties from 9.30A.M to till closure of the bank at the instruction of the Branch Manager. He further stated that initially he received Rs. 3/- per day as a daily wage and later on it was enhanced to Rs. 5/- per day. This witness further proved the payment details of the period 31.03.1992 to 29.05.1996 i.e issued by Branch Manager to the Regional Office i.e marked as Ext.-W. This witness further proved the photo copy of Dak Delivery Register of dt- 30.06.2003, 10.12.2001, 28.05.1992, 05.09.1994, 23.01.1990, 21.09.1995, 07.10.1995, 15.03.1994, 04.09.1995 and the same is proved asExts. W/1 to W/1-8. This witness further stated that he used to tag the vouchers thereafter, he used to make entries in vouchers register over which the then manager used to put his signature and this witness proved the copies of the vouchers register i.e 01.01.1995 to 31.12.1995 i.e marked as Exts.-W/2 to W/2-10. This witness further stated that he was stopped from doing work from 01.01.2005 then he met to the Regional Manager who used assure me for reinstatement and he has filed petitions for his reinstatement of service and the copy of the petitions he has retained and he can produced before this tribunal. This witness further stated that bank neither gave me any notice nor any notice pay before termination. He has brought this dispute for reinstatement in service.

In cross-examination this witness categorically stated in para-10 of the cross-examination that he was engaged in the service of bank by then branch manager at that time his age was 15 years. This witness also admitted in para-11 bank never maintained his attendance register as he orally served in the bank and he never received any appointment letter from the bank. In para-12 of the cross-examination this witness stated that there was no canteen in the bank so he used bring tea, water, for staff from the out side of the bank and he further denied that he was kept in the bank as a canteen boy. In para-15 of the cross-examination this witness categorically admits that one person was posted as a peon but he used to do the work of clerk. In para-15 of the cross-examination this witness categorically stated that he always put his signature on the vouchers while receiving the payment from manager sahib and he further denied that he always received the payment as a canteen boy. On tribunal question this witness categorically stated that he used to assured by Regional Manager and Branch Manager for his reinstatement from 2005 to 2018 and in the mean time vacancy was also advertised and he also applied for the post but he was not absorbed.

8. W.W-2 Ram Nandan Singh who deposed before this tribunal on 18.05.2022 who stated in his evidence that he was President of PNB Staff Union in 1996. He further proved the letter of dt- 10.01.1996 and 04.04.1996 i.e sent by him to the Regional Manager marked as Ext.-W/3 to W/3-1. This witness further stated that a resolution of executive committee regarding raising the Industrial Dispute for the permanent absorption of Mohan Kumar was made on 24.11.1996 and that resolution is written and signed by him on 30.01.1997 marked as Ext.- W/4. This witness further stated that on the basis of resolution the dispute was raised before the ALC (C) Pakur and a letter was issued to the ALC (C) i.e in his signature marked as Ext.-W/5. This witness further stated that some time he visited to Jhanjharpur Branch of PNB of any exigency where he saw Mohan Kumar doing the duty of peon who is a physically handicapted person.

In cross-examination this witness categorically stated that he knows Mohan Kumar being the President, of Union Mohan Kumar was orally appointed in the year 1998 by the then Branch Manager but he does not remember the name of the manager. In para-8 of the cross-examination this witness categorically stated that branch manager has no authority to appoint any person. Mohan Kumar did not get wages to the extent he worked there. In para-8 of the

cross-examination this witness categorically stated that how many staff were posted in the Dharbhanga reason he does not remember. I have no paper of union because of this matter is so old.

9. On the other hand management produced Nand Mohan Das as M.W-1 who deposed who is Senior Manager in Circle Office in Dharbhanaga, deposed before this tribunal 0n 28.07.2022. This witness stated before this tribunal he is posted in HRD Dharbhanga from the year-2011. He further stated that there is two methods of recruitment peon (i) direct recruitment in which vacancy was used to be advertised in the news paper, accordingly applicants apply the form and if their applications are found correct their candidature is ententional on the basis of their eligibility and then the merit list is prepared followed by appointment letter is issued. (ii) the second method conversion method who so ever is doing the work of PTS, their applications is also entertained on the basis of senioritywith the ratio of 20%.Besides there two methods some recruitment is based on compassionate ground. This witness further stated that there is no procedure of oral appointment in the bank but bank some time engage casual or daily wager on the basis of requirement. This witness further stated that intermediate is the basic qualification for the post of peon. This witness further stated that the workman Mohan Kumar, whenever he discharged his duties in Jhanjharpur branch he was paid accordingly.

In cross-examination this witness categorically admits that he was never posted in Jhanjharpur branch of PNB however, he joined the PNB in the year 1989. This witness also admits that Mohan Kumar received his payments through vouchers. In para-13 of the cross-examination this witness categorically stated that Ext.-W/1-1 i.e the photo of copy Dak Delivery Register that bears the name of Mohan Kumar also and perhaps duty is done by the Mohan Kumar in the absence of peon. In para-14 of the cross-examination this witness categorically stated that the Ext.-W is the details of payment made to the workman i.e issued to Sri Uttam Kumar, Manager RMD (Regional Manager, Dharbhanga. In 15 of the cross-examination this witness categorically stated that there is no post of temporary peon in the bank but the terms of reference shows about the temporary peon. In para-18 of the cross-examination this witness categorically stated that the workman was not entitled for any notice or notice pay from the bank. In para-20 of the cross-examination this witness categorically stated that every one get opportunity to apply in recruitment process, according to eligibility but there is no weightage for the daily wager in the selection procedure. In para-21 this witness admits that there is rules in the banking industry regarding retrenchment last come first go. In para-23 of the cross-examination this witness categorically stated that principally if any one takes services of the worker for a long time without any service condition comes under the purview unfair labour practice but he cann't say what is the procedure to stop unfair labour practice. This witness categorically denied that bank has violated the section-25(F), 25(G) and 25(S) of the Industrial Dispute Act, 1947 and rules of 77 or 78 of Industrial Dispute Central Rules.

10. It is argued from the workman side that Mohan Kumar worked as a temporary peon in Jhanjharpur branch of PNB the year 02.01.1988 to 2004 and he discharged his duties in the bank at the instruction of Branch Manager for which workman himself supported his claim in his evidence about his duties and about his payment details and he also produced supporting details of his paymentsfrom 31.03.1992 to 29.05.1996 Ext.-W. It is further argued that the workman was terminated on 01.01.2005 by the bank without giving him notice or notice pay preceding his termination. The workman also filed a copies of the vouchers of the register i.e maintained by him and it is counter signed by the Branch Manager over the same i.e Ext.-W/2 to W/2-10. It signifies the bank has taken the duty of Mohan Kumar as a temporary peon. W.W-2 Ram Nandan Singh the President, of PNB Staff Union also supported the claim of the workman he also proved his two letters of dt- 10.01.1996 and 04.04.1996 sent to the Regional Manager PNB Dharbhanga for the absorption and regularisation of Mohan Kumar in the service of bank i.e Ext.-W/3, W/3-1. It is further argued that the management witness also does not discard the claim of the workman Mohan Kumar regarding his duties tenure, since management did not prepare any list of retrenched workman i.e violation of the section-25(G) of the I.D.Act. Moreover, the termination of the workman is covered u/s-2(00) of the I.D.Act. It is further argued that management deliberately did not produce a copies of the vouchers.Moreover without giving any service condition to the Mohan Kumar, taking his service for a fairly long time is kind of unfair labour practice as per section-25(T) of the I.D.Act. The representative of the workman relied on the judgement of Hon'ble S.C Narottam Chopra Vs Presiding Officer, Labour Court & others 1989 SCC (L & S) 565 where it is held that it is well settled that if the service of a employee is terminated in violation of 25(F) of the I.D.Act, the order of termination is rendered ab initio void and the workman case is related to the above judgement. The representative also relied on the ruling passed in Mithilesh Kumar Singh Vs. State of Bihar 1994 (2) PLJR 249 where it is held that the assumption of appointment being illegal will itself qualify as retrenchment within the meaning of section 2(oo) if the termination is made without giving any notice or notice pay to the workman. The representative of the workman also relied on the judgement passed by the Hon'ble Apex Courtin Mintu Kumar Vs Punjab National Bank, Zonal Office, Muzaffarpur, Bihar in SLP (C) 31795 of 2018 in which the Hon'ble Apex Court allowed the appeal of Mintu Kumar and restored the award passed by Industrial Tribunal, Patna in which I.T, Patna directed the management bank / PNB to reinstate the workman Mintu Kumar in the services as a IV Grade employee and his service be regular. It is further argued that on the basis of above rules and finding of the Hon'ble Apex Court and the case of the workman Mintu Kumar proves the case of Mohan Kumar established under I.D.Act and so workman is entitled for reinstatementin his services and the action of the management bank in terminating the service of Mohan Kumar is totally illegal and unjustified.

11. It is argued from the management side that the dispute has not been duly and validly espoused in as such as the union has failed to file any document on record to show the espousal of the cause of present dispute by a body of workmen, so it can not be termed as an Industrial Dispute in terms of section 2(K) of the Industrial Dispute Act, 1947. It is further argued that union has sought to evade the rules of recruitment in the subordinate cadre in the bank although it is a settled position of law that there can be no recruitment except through the recruitment rules in the bank. It is further argued that when a person enters into an adhoc engagement and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary or casual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection. Here in the instant case union has no right to claim of regularization or employment in service of Sri Kumar because claimant was just a casual worker whose services were utilized as and when required for which he was duly paid. He was not a permanent employee of the bank so no question of termination arises. It is further argued that claimant in the present issue cannot be treated as a workman as per section-2(S) of the I.D.Act because he was just a casual worker whose services were utilized as and when required for which he was duly compensated.There was no employer-employee relationship between the bank and claimant. It is further argued that **Hon'ble S.C in Civil Appeal No.- 1878 of 2016 (Oil and Natural Gas Corporation Vs. Krishna Gopal &Ors.) after discussing the various judgements including that of Hari Nandan Prasad vide its judgement dt- 07.02.2020 has held that the following propositions would emerge upon analyzing the above decisions:**

(i) Powers of Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even through such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the I.D.Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen."

It is further argued that the claim of the workman is a stale claim he as per his claim he has been stopped working in the bank from 01.01.2005 but he raised the dispute in the year 2018 and further no proof of filing representation petition brought on the record by the workman as claimed before this tribunal so claimant is not entitled for any relief.

12. Considering all the facts and circumstances of the case and the submissions oral as well as documentary evidence along with some rulings placed by the rival parties before this tribunal and submissions as advanced on the behalf of both the parties, this tribunal finds that taking into consideration of the first issue, the management side made objection that claimant Mohan Kumar does not come under the purview of workman as per section-2(S) of the I.D.Act. To adjudicate this issues, first of all this tribunal takes the definition of workman 2(S) of the I.D.Act. Section-2(S) of the I.D.Act says that:- :- **[(S) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—**

(i) Who is subject to the Air Force, Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 or 1957); or

(ii) Who is employed in the police service or as an officer or other employee of a prison, or

(iii) Who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding 56a [ten thousand rupees] per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

On plain reading of 2(S) of the I.D.Act workman may be employed orally for the work for hire or reward whether the terms of employment expressed or implied and for the purposes of any proceeding under this Act in relation to any Industrial Dispute whose dismissal, discharged, retrenchment led to that dispute, here in the instant case claimant Mohan Kumar was orally engaged by the management bank that is also admitted by the workman and he was paid his wages @ daily wage but he was stopped from doing work in the bank on 31.12.2004 led this dispute so the claimant Mohan Kumar comes under the purview of workman as per section-2(S) of the I.D.Act. this tribunal finds no force in the contention of the management in this regard.

13. So far as issue no.-2 is concerned, the workman Mohan Kumar claimed he had discharged his duties as a temporary peon in the management bank from 02.01.1988 till 31.12.2004 and he was stopped from doing any work in the bank from 01.01.2005 this is supported by the workman in his evidence as well as in his statement of claim. Further workman claimed that he has filed representation petitions several times before raising this dispute in the year 2018 and by way of Ext.-W/5 tried to show he has filed representation petitions in te year 20o5, 2007, 2009, 2011, 2012, 2014 and 2015 and the workman W.W-1 also admitted before this tribunal he can file copies of all the representations sent to the management bank but interestingly no copy of such petition filed by the workman before this tribunal. So the plea taken by the workman of filling his representations in between from 2005 to 2015 looks not convincing and acceptable. So issue is not at all proved by the workman.

14. So far as issue no.-3 is concerned, this tribunal finds that claim of the workman is, he has discharged the duties in the bank as a temporary peon from 02.01.1988 to 31.12.2004 continuously. However, the management bank claimed the services of workman Mohar Kumar was takan as and when required. In this regard workman filed a letter of dt- 18.06.1992 issued by the than Branch Manager to Regional Office regarding payment given to the Mohan Kumar from the bank from (31.03.1992 to 29.05.1996) this document shows that the Mohan Kumar was paid for supply of water for the canteen subsidiary as per endorsement made by the then Branch Manager in the said document but yet this document shows that the Mohan Kumar was engaged in the Jhanjharpur branch of PNB doing that period. Of course nomenclature of the payment as shown by the Manager is in two different heads i.e payment @ daily wage because management never stated before this tribunal Mohan Kumar was engaged as a canteen boy or for supply of water. This tribunal further finds that Ext.-W/1 series shows that Mohan Kumar was also sent for Dak Delivery work because 09 photo copies of Dak Delivery Register i.e of different dates from 10.12.2001 to 04.09.1995 and one of 30.06.2003 clearly shows that this work was done by Mohan Kumar. Further Ext.-W/2 series workman Mohan Kumar filed the copies of vouchers registers of the year 1995 i.e from January 1995 to December-1995 i.e the entires of that register filled by Mohan Kumar and signed by than Branch Manager. Further workman filed two letters of dt- 10.01.1996 and 04.04.1996 (Ext.- W/3 & W/3-1) issued by R.N.Singh the then President of PNB Staff Union, Bihar to Regional Manager, PNB Darbhanga made prayer for Mohan Kumar for his confirmation and permanent absorption in the bank disclosing Mohan Kumar was doing duties of temporary peon from 1988. These two documents also establishes this facts Mohan Kumar was engaged in the Jhanjharpur Branch of PNB from 1998 to 1996 as per two letters. Mohan Kumar also filed a letter of resolution of executive committee of dt- 24.11.1996 (Ext.-W/4) for raising Industrial Dispute for permanent absorption Mohan Kumar temporary peon. After securitizing these above documents as filed by the workman Mohan Kumar clearly establish this facts Mohan Kumar was engaged by the Jhanjharpur branch of PNB from 1988 to 1996 further management bank could not discard these claims as placed by the workman by way of oral as well as documentary evidence. This tribunal further finds that even after resolution of raising dispute for the Mohan Kumar passed by the executive committee, ut no dispute was raised at that time by PNB Staff Union, Bihar reasons best known to workman and his staff union. This tribunal further finds that workman could not place any authentic proof, why Industrial Dispute is not raised by the workman or by his union even after serving in the management bank from 1988 to 1996 continuously as per assertion of the workman. This tribunal further finds that no documentary proof is given by the workman for the period of 1997 to 31.12.2004 regarding his payment and working in the management bank save and except oral testimony of Mohan Kumar. Workman also stated in his evidence that bank has advertised vacancy for the post of peon and he has also filled the form but he was not absorbed in the bank. Here management bank clearly stated, there is the set rules of the recruitment of the class IV employee and beyond that rule, no temporary workmen are daily wager can get absorption in service and Mohan Kumar also admits he has participated in the selection process of the recruitment of peon but he could not succeeded. The mind set of workman by raising this instant dispute in the year 2018 clearly shows that when he could not succeed in the selection process of recruitment of peon post. He took this alternative by raising dispute for his past engagement from 1988 to 31.12.2004 after a gap of almost 13 years certainly it amounts is stale claim. Workman might have raised Industrial Dispute in the year 1996 when his union executive passed resolution for raising dispute for him in the year 197 as per Ext.-W/4 the letter dt- 30.01.1997 issued by President, PNB Staff Union and workman might have raise Industrial Dispute when he was stopped for working in the management bank on 01.01.2005 because resolution of raising dispute was already taken in the year 1996 by his union. The settled principle is, if a workman does duty in any industry like in bank for 240 days continuously in a calendar year preceding to the termination date,

No industry or bank can retrenched a worker without notice or paying compensation as per section 25(F) of the I.D.Act. This tribunal further finds that management was on wrong foot when the workman was stopped for doing work continuously for more than 240 days in a calendar year but workman also did not raise any complaint before the appropriate authority for resolving his dispute at that time. Of course workman did not raise his dispute of regularization or against the termination earlier but yet it can not be said that management bank did not take the services of workman for a long 17 years before stopping him to do work in the bank. On this score termination of the workman was not justified in the year 2005 when workman was stopped for doing work from 01.01.2005. As per oral and documentary evidence placed by workman. But at the same time there is set rules of recruitment of the bank of the selection for the post of peon in subordinate cadre and in that selection process the workman was also participated but could not succeed, accordingly workman could not take advantage for regularization and absorption in the service of the bank but yet taking into consideration his services taken by the management bank for a long 17 years as a daily wager without giving him any extra benefits, he is entitled a lum-sum amount of Rs. 3,00,000/- (Rs. Three Lakhs) only from the management bank to meet out the justice.

15 On the ultimate analysis of the facts and circumstances of the case and the materials available on the record as discussed above, this is the considered opinion of this tribunal that workman Mohan Kumar is entitled for relief of lum-sum amount of Rs. 3,00,000/- (Rs. Three Lakhs) only from the management bank PNB. Accordingly the management bank is directed to make payment a lum-sum of amount of Rs. 3,00,000/- (Rs. Three Lakhs) to the workman Mohan Kumar within two months after publishing of this award. This award is effected after date of publication in gazette.

This is my award accordingly.

Dictated & Corrected by me.

19.03.2024

MANOJ SHANKAR, Presiding Officer

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नई दिल्ली, 13 जून, 2024

का.आ. 1186—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरिएंटल बैंक ऑफ कॉमर्स के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-I के पंचाट पंचाट (08/ 2013) प्रकाशित करती है।

[सं. एल -12012/84/2012-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.08/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-I* as shown in the Annexure, in the industrial dispute between the management of Oriental Bank of Commerce and their workmen.

[No. L-12012/84/2012-IR (B- I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.

ID No.08/2013
Registered On: 08/04/2013
Sh.Naresh Kumar S/o Sh.Prem Chand, R/o Sirta Road ,Near Sunil Tent House, Distt.- Kaithal, Haryana

.....Workman

Versus

The Chief Manager, Oriental Bank of Commerce, Branch Office, Timber Market, Kaithal, Haryana

.....Managements

AWARD
Passed On: 01.04.2024

Central Government vide Notification No. L-12012/84/2012-IR(B-II) dated 07.03.2013, under clause (d) of Sub-Section (1) sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the demand of Sh. Naresh Kumar S/o Sh. Prem Chand for reinstatement and regularization in service with the management of Oriental Bank of Commerce w.e.f. 17.03.2018 as sweeper/peon is just, fair and legal? What relief the workman is entitled to?"

1. During the pendency of the proceedings before this Tribunal the case was fixed for evidence workman but none is responding on behalf of workman since long i.e. from 09.05.2023. It is submitted by the Ld. Counsel for the management that workman is not turning up since long and prayed for dismissal of the present claim petition.

2. Perused the file and it is found that the submissions made by the Ld. Counsel for management is true. Several opportunities have already been given to the workman for evidence but of no use. Which denotes that the workman is not interested in adjudication of the matter on merits as such, this Tribunal is left with no choice except to pass a 'No Claim Award'. Accordingly, no claim award is passed in the present case for the non-prosecution of workman. File after completion be consigned in the record room.

3. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, PO-cum-Link Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1187.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **बैंक ऑफ इंडिया** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (32/2015) प्रकाशित करती है।

[सं. एल – L-12011/98/2014-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.32/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen.

[No. L-12011/98/2014-IR (B- II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/32/2015

Present: P.K.Srivastava

H.J.S..(Retd)

The General Secretary,
Dainik Vetan Bhogi Bank Karmchari Sangathan,
F-1, Tripti Vihar, Opp. Engg. College,
Ujjain(MP)-456010

Workman

Versus

The Regional Manager
Bank of India, Zonal Office, 18,
Shanku Marg, Freeganj, Ujjain (M.P.)

Management

A W A R D
(Passed on this 23rd day of April -2024.)

As per letter dated 27/02/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/98/2014 IR(B-II) dt. 27/02/2015. The dispute under reference related to :-

''क्या बैंक ऑफ इंडिया आंचलिक कार्यालय, 18 शंकु मार्ग, उज्जैन म.प्र. द्वारा श्री नंदकिशोर माधोलाल को 17.12.2009 से 19.11.2012 तक वर्ष में 240 दिनों से अधिक काम करने पर भी बिना किसी नोटिस या मुआवजा के काम से पृथक कर देना न्यायोचित है ? अगर नहीं, तो श्री नंदकिशोर माधोलाल किस अनुतोष के अधिकारी हैं ?''

After registering the case on reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

According to the workman union, the applicant workman Nandkishor Madholal was appointed by the Deputy Regional Manager Vikas Damle after interviewing him on monthly wages Rs. 5250/- on 17.12.2009 to work as a driver of the bank jeep MPCA/0669 under his oral orders. The applicant worked continuously for more than 12 hours in a day. The movement of the said jeep was recorded in the logbook maintained by the applicant and counter signed by the officer of the bank. His salary was increased to 6500/- per month whereas the driver of the Regional Manager was given salary @ of 9200/- and the driver of the Deputy Regional Manager was being given salary @ of Rs. 9080/- per month. The management bank disengaged the applicant from 18.11.2012 without any notice of compensation. Which is in violation of Section 25-B, 25-F, 25-G and 25-N of the Industrial Disputes Act 1947 (in short the word 'Act'). It is further alleged that the management adopted unfair labour practice by not issuing appointment letter to the applicant, not paying wages as per law, not preparing muster roll and by not issuing termination order in writing. The union has thus prayed that the applicant workman be held entitled to be reinstated with all back wages and benefits setting aside his disengagement.

In its written statement of defense, the bank has denied the engagement of the applicant in any capacity and had pleaded that there are certain recruitment procedure for recruitment of drivers and other employees. According to the management bank certain bank officers are provided with vehicles which they also use for personal purpose subject to the rules laid down in this regard. Bank normally does not provide drivers to such officers rather drivers are provided only to few top executives. The other officers who are provided vehicles are entitled to allowances fixed by the bank for fuel maintenance and engaging personal drivers. Sometimes, they use the services of the personal drivers for driving these vehicles for bank purposes also for which such drivers are paid through the officers. According to the management the applicant was engaged by the then Chief Manager Shri M.B. Rangari in his individual capacity and was at no point of time, he was an employee of the bank. He was paid his wages by Mr. Rangare and not by bank. The bank used to reimburse Mr. Rangare. Hence, as pleaded by bank there is no question of termination of the services of the workman by the bank. Accordingly, the bank has requested that the reference be answered against the workman.

The workman has filed his affidavit as his examination in chief on which he has been cross examined by management. He has filed and proved photocopy documents which are Ex. W/1 to W/16, to be referred to as and when required. Management has also filed affidavits of its witnesses Sunil Gupta and Rangare who have been cross examined from the side of workman union.

None was present from the side of workman union, hence argument of Mr. Neeraj Kewat were heard by me. Later on workman side filed written arguments which have been taken on record. I have gone through the record as well.

From perusal of record in the light of rival arguments, following issues arise for determination.

1. Whether the applicant has successfully proved his continuous engagement by bank for 240 days and more within an year ?
2. Whether the applicant was disengaged by the bank ?
3. Whether, the disengagement of the applicant is in violation of Section 25-G, 25-F and 25-N of the Act ?

Issue No.-1 :-

Pleadings of the parties on this issue have been detailed earlier. The workman has corroborated his case on this issue in his statement on oath. The management witnesses specially witness Rangare has stated that he had engaged the applicant in his personal capacity as his personal driver. Sometimes the applicant was used for bank work also. The other management witness Sunil Gupta admits in his statement that the vehicle MP13/CA0669 was bank vehicle. Either bank appointed driver for its vehicle or the officer using bank vehicle engages driver for its on casual basis as and when the occasion arises.

None of the documents proved by the workman union goes to show that the applicant was paid his wages at any point of time by the bank. The documents filed and proved only indicate that the vehicle was at the best, taken by the applicant for services etc. to the service centre for which charges were paid by the management bank and sometimes the applicant had driven the said vehicle for election and other purposes. Since, there is no evidence regarding payment of wages of the applicant by bank in any manner, only the on oath statement of the workman is held not so reliable in the light of statements of management witnesses. Hence, it is held that the engagement of the applicant workman by the bank even as a daily wager is not proved.

The issue no.-1 is answered accordingly.

Issue No.- 2 & 3 :-

In the light of finding recorded on issue no.-1, these issues are answered against the workman union.

In the light of above observations and findings, the reference deserves to be answered against the workman and is answered accordingly. No order as to cost.

DATE: 23/04/2024 P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1188.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **बैंक ऑफ इंडिया** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (34/2015) प्रकाशित करती है।

[सं. एल-12011/100/2014-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1188.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.34/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen.

[No. L-12011/100/2014-IR (B- II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/34/2015

Present: P.K.Srivastava

H.J.S..(Retd)

The General Secretary,
Dainik Vetan Bhogi Bank Karmchari Sangathan,
F-1, Tripti Vihar, Opp. Engg. College,
Ujjain(MP)-456010

Workman

Versus

The Regional Manager
Bank of India, Zonal Office, 18,

Shanku Marg, Freeganj, Ujjain (M.P.)

Management

A W A R D

(Passed on this 23rd day of April -2024.)

As per letter dated 27/02/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/100/2014-IR(B-II) dt. 27/02/2015. The dispute under reference related to :-

''क्या महासचिव दैनिक वेतन भोगी कर्मचारी संगठन द्वारा श्री नंदकिशोर माधोलाल के बैंक ऑफ इंडिया आंचलिक कार्यालय में दिनांक 17.11.2009 से 19.11.2012 तक नियंत्रणाधीन वसूली विभाग आंचलिक कार्यालय में कार्यरत् रहने के दौरान द्विपक्षीय समझौता के अनुसार देय वेतन की मांग करना न्यायोचित है ? अगर हाँ, तो श्री नंदकिशोर माधोलाल किस अनुतोष के अधिकारी हैं ?''

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

According to the workman union, the applicant workman Nandkishor Madholal was appointed by the Deputy Regional Manager Vikas Damle after interviewing him on monthly wages Rs. 5250/- on 17.12.2009 to work as a driver of the Bank jeep MPCA/0669 under his oral orders. The applicant worked continuously for more than 12 hours in a day. The movement of the said jeep was recorded in the logbook maintained by the applicant and counter signed by the officer of the Bank. His salary was increased to 6500/- per month whereas the driver of the Regional Manager was given salary @ of 9200/- and the driver of the Deputy Regional Manager was being given salary @ of Rs. 9080/- per month. The management Bank disengaged the applicant from 18.11.2012 without any notice of compensation. According to the workman union the management Bank was under legal obligation to pay salary to its daily wages employee as provided in para 5.191 and para 4.5 of the first bipartite settlement dated 19.10.1966, which they did pay to certain workman before the Regional Labour Commissioner Bhopal details mentioned in para 10 of the statement of claim. According to the workman union, the management Bank thus acted arbitrarily in not paying the wages as per law. The union has thus prayed that the applicant workman be held entitled to salary according to the bipartite settlement.

In its written statement of defense, the Bank has denied the engagement of the applicant in any capacity and had pleaded that since the applicant was not a regular employee, he is not entitled to benefits of bipartite settlement because it is applicable only to the regular employees.

The workman has filed his affidavit as his examination in chief on which he has been cross examined by management. He has proved some photocopy documents on the point of his engagement. Management has also filed affidavit of its witness and has been cross examined from the side of workman union.

None was present from the side of workman union, hence argument of Mr. Neeraj Kewat were heard by me. Later on workman side filed written arguments which have been taken on record. I have gone through the record as well.

The reference itself is the issue for determination.

The perusal of the Bipartite settlement makes it clear that it is applicable only to the regularly appointed employees of Banks. Hence, even if the case of the applicant workman that he was appointed as a daily wager be taken at its face value, he will not be entitled to protection and benefits under the bipartite settlement. Hence, holding the claim of the applicant workman not tenable in law, the reference deserves to be answered against the workman and is answered accordingly.

DATE: 23/04/2024 P . K. SRIVASTAVA, Presiding Officer

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

नई दिल्ली, 13 जून, 2024

का.आ. 1189.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एंड जयपुर के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट (04 (C) of 2017) प्रकाशित करती है।

[सं. एल-12012/110/2016-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (04 (C) of 2017*)* of the *Indus.Tribunal-cum-Labour Court Patna* as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner and Jaipur and their workmen.

[No. L-12012/110/2016-IR (B- II)]

SALONI, Dy. Director

ANNEXURE

Before The Presiding Officer,
Industrial Tribunal, Patna.

Reference Case No.:-04 (C) of 2017

Between the management of the Regional Manager, State Bank of Bikaner and Jaipur, Regional Office, Opp. Kulharia Complex, Ashok Rajpath, Patna (Bihar)-800004. And Their workman Sri Jawahar Kumar, Peon / Messenger represented through the President, Bank Employees Federation, Bihar, Saboo Complex, 2nd Floor, Behind Republic Hotel, Exhibition Road, Patna (Bihar).

For the management:- Sri Rashmi Rathi Sharma, Manager, Law, SBI.
Smt. Bhargavi Jha, Manager.
Smt. Richa Priyambada, Law Officer.

For the workman:- Sri B. Prasad, President, Bank Employees Federation, Bihar.

Present:- **Manoj Shankar**
Presiding Officer,
Industrial Tribunal, Patna.

A W A R D

Patna, dt- 5th April, 2024.

By the adjudication order no.- L-12012/110/2016-IR(B-I) New Delhi, dated- 26.10.2017 the Govt. of India Ministry of Labour New Delhi has referred under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as " the Act") the following dispute between the management of Regional Manager, State Bank of Bikaner and Jaipur, Regional Office, Opp. Kulharia Complex, Ashok Rajpath, Patna (Bihar)-800004. And Their workman Sri Jawahar Kumar, Peon / Messenger represented through the President, Bank Employees Federation, Bihar, Saboo Complex, 2nd Floor, Behind Republic Hotel, Exhibition Road, Patna (Bihar) for adjudication to this tribunal.

SCHEDULE

" Whether the action of the management of State Bank of Bikaner & Jaipur in not regularizing the services of Sri Jawahar Kumar Peon / Messenger, Buxar Branch is justified? If not, to what relief the workman concerned is entitled to?"

2. As per the statement of claim,the case of the complainant is that State Bank of Bikaner & Jaipur is a public sector bank, having its Head Office, Jaipur, one of its Regional Offices at Ashok Rajpath, Patna and one of its branches at Buxar. After the notification of Government of India the State Bank was merged with the SBI. It is further asserted that due to paucity of Subordinate Staff, Sri Jawahar Kumar the claimant was orally appointed at Regional Office of the State Bank of Bikaner & Jaipur to discharge the duties of the a peon and messenger from 01.09.1995 in the State Bank of Bikaner and Jaipur now called State Bank of India after merger. It is further asserted that the workman Jawahar Kumar used to discharge the duties from morning 9.30A.M to 6.00 P.M evening during that period he used to open the Bank's Gate, taking out cash box from strong room to cash counter. He used to place registers / books to the staffs on their demand and he also served posting work when ever deputed by the manager. He also discharged the duties of hospitality for staff and customers. He was also discharged the duties of stitching of vouchers / currency notes as per instruction. It is further asserted that initially workman was paid wages @ Rs. 275/- per day. It is also asserted that the payment was made through different modes and some times even through different names. It is further averred that workman has been discharging his duties formore than 15 years without getting any proper service condition. It is further asserted that head office of the bank asked for the names of temporary / casual / daily rated worker doing the duties of peon, messenger for proper consideration including of their service but the workman was not aware whether his name was forwarded by the branch or not. It is also asserted that the duties of the workman was perennial in nature. It is further asserted that workman has been demanding regularization of his service but no positive step has been taken as yet.The bank authority has not taken any step. However, the management bank took the services of workman against the permanent vacant post of messenger. It is further asserted that when workman

found no scope of regularisation of his service, he raised an Industrial Dispute before conciliation officer, due to non conciliatory attitude of the bank, the conciliation proceeding ended in failure and ultimately this reference is sent by appropriate Govt. to this tribunal for adjudication. It is further asserted that taking the service of workman for a long time without giving any service condition. The management bank constitutes unfair labour practice as per section-25 (T) of the I.D.Act read with Schedule V of the I.D.Act, 1947. Thus workman seeks relief :-

(i) Regularisation of services as a messenger / peon;

(ii) Payment of dues wages from the date of his working;

(iii) Payment of a sum of Rs. 10,000/- for contesting the dispute;

(iv) Any other relief (S) this tribunal deems fit and proper;

3. On the other hand management bank filed written statement stating therein State Bank of Bikaner & Jaipur amalgamated in the transferee bank i.e State Bank of India after Govt. Notification dated-22.02.2017. It is further asserted that complainant is not an employee of the bank, infact he was never appointed in any manner whatsoever. Since Jawahar Kumar was not an employee then no question arises that he was a messenger / peon in the bank. So question of regularisation of his service does not arises at all. It is further asserted that Jawahar Kumar the claimant was engaged by the Buxar branch of erstwhile SBBJ for doing work of casual nature. No right accrued in his favour for regularization of service. Further branch has no power to appoint any person in subordinate cadre. The facts is that recruitment is regulated by the bank's recruitments rules. Claimant was never issued any appointment letter by bank nor he was engaged by the bank to performing the duties of messenger. It is further asserted that the claim of the claimant as asserted regarding his duties and mode of payment is totally false that is denied by the management bank. Bank took the services of Jawahar Kumar on as an when required basis and he was paid accordingly.Whenever claimant discharged his duties in the bank as casual worker on requirement basis he was paid on the basis of bills. The claim of the claimant is totally false showing he was engaged by the bank as a messenger / peon. It is further asserted that the statements made in para 3 (viii) of the statement of claim as filed by the workman is correct to some extent. There was no scope of recommendation while furnishing the details by the branch. It was not intended for recruitment, regularization or appointment of any person but merely for information collection prior to amalgamation of both banks. The claimant's name was never submitted to the head office. It is further asserted that as no unfair labour practice is on the part of management / bank because claimant was fully compensated when ever he did the work of electrical, sanitary work. This claimant Jawahar Kumar is not entitled to any relief.

4. The workman side also filed rejoinder to the written statement as filed by the management side and asserted therein Jawahar Kumar the concerned workman initially orally appointed at the Regional Office of State Bank of Bikaner & Jaipur from 01.09.1995 to discharge the duties of peon / messenger and thereafter the workman was transferred to Buxar Branch, where he worked from 16.08.2013 to 08.12.2017. It is also asserted that management of Buxar Branch on the instruction of Regional Manager, Arrah, terminated the service of the workman from 11.12.2017 during the pendency of this dispute i.e violation of section-33 of the I.D.Act. it is further asserted that the management also formulated schemes from time to time to absorb / regularize the services of temporary, daily rated messengers and Govt. of India, Ministry of Labour also prepared approach papers on different occasions for absorbing / regularising the services of daily rated / temporary messenger / peons. It is further asserted that Jawahar Kumar attained the status of a workman as per section-2(S) of the I.D.Act and that's why the appropriate Govt. referred the dispute before this tribunal for adjudication. So demand of the workman for regularisation of his services of the bank as a messenger against the permanent vacant post is to be adjudicated by this tribunal. It is further asserted that SBBJ (State Bank of Bikaner & Jaipur) had issued a circular asked for the names temporary / casual / daily rated worker who performed the duties of a messenger.The SBBJ,only can spell out the details of the scheme. It is further asserted that the workman discharged the duties of a messenger for over 22 years in the management bank against a vacant permanent post of messenger but he was not paid due wages this comes under the unfair labour practice as per section 25(T) of the I.D.Act that's why the workman is entitled for regularisation and reinstatement of the bank.

5. In order to establish his claim, workman side examined just one witness, the workman Sri Jawahar Kumar as a W.W-1. Besides oral evidence workman side got some documents marked as:-

(i)	Ext.-W-	Cash remittance voucher of dt- 31.03.2017 in the pen and signature of Haiment Kumar Prasad the Branch Manager.
(ii)	Ext.-W/1-	Payment voucher of 31.03.2017 amounting Rs. 3640/- paid to Jawahar Kumar i.e in the pen and signature of Haimant Kumar Prasad, the Branch Manager.

(iii)	Ext/-W/2- to W/2-29	Payment made to the Jawahar Kumar for its different works through vouchers from 26.02.2016 series onwards.
(iv)	Ext.- W/3-	Voucher of dt- 15.07.2017 paid to Jawahar Kumar for the conveyance charges of work dt-
(v)	Ext.- W/4-	Voucher of dt-05.07.2017 paid to Jawahar Kumar for the conveyance charges of Rs. 300/- of work dt-30.06.2017.
(vi)	Ext.-W/5-	Voucher of dt- 05.07.2017 amounting Rs. 4950/- paid for cleaning of branch to Jawahar Kumar for the 11 days works.
(vii)	Ext/-W/6-	Payment voucher of dt- 25.09.2017 for the work of 01.09.2017 to 15.09.2017 paid to Jawahar Kumar.

6. On the other hand management side examined altogether three witness to controvert the claim of the workman, who are namely Haiment Kumar Prasad, Branch Manager (W.W-1), Shiv Nath Kumar, Assistant (M.W-2), and Sanjay Nath Charan (W.W-3).

Management sides did not get any documents Extd.

7. First of all this tribunal, scrutinizes the evidence of the workman Jawahar Kumar (W.W-1) who stated before this tribunal he was working in the State Bank of Bikaner & Jaipur, Regional Office, Patna from 01.09.1995 to 14.08.2013. Thereafter, he was engaged for his service in SBBJ, Buxar branch from 16.08.2013 to 08.12.2017. This witness further stated that he used to discharged his duties at management bank right from opening of the bank till 8-9 P.M. During his working he used to open the bank thereafter he used to clean the bank premises before the bank time. He put registers on the counters as per requirement of the staff, some time he took the cash box and place the same to cash counter. This witness also stated that he used to stich the voucher and some time he was sent for cash remittance by the branch manager and he also discharged the duties of postal work. This witness further stated that his duties was similar to permanent peon or messengers. This witness further stated that there was no permanent peon and no permanent sweeper posted in the Buxar branch of SBBJ during his service period. This witness further stated that he was paid @ Rs.450/- to Rs.500/- per day by the bank manager after passing the voucher and some time he received the payment in other names also. This witness further stated that he discharged the duties in the management bank at the instruction of than Branch Manager. This witness also admitted that no appointment letter was issued by the bank but he used to make entry of his hazari in a Shadow register. This witness further stated that when the notice receive by the bank from this tribunal he was stopped from doing work their. This witness further stated that he used to received wages for the cash remittance and cleaning work separately. This witness further stated that his claim is for his reinstatement and regularisation of his service.

In cross-examination this witness categorically stated in para-14 that he never filed any petition before the bank authority for his regularisation of his service. This witness also admits in cross-examination initially he was doing the duty of opening the bank gate at and cleaning the premises. In para-16 of the cross-examination this witness categorically stated that he did not receive any appointment letter from the bank and he also never asked bank for the appointment letter. This witness also admits in para-17 that he never paid any subscription fee to any union and he used to received his payment of wages through voucher and he has filed some vouchers. In para-19 of the cross-examination this witness admits his date of birth is 06.09.1983 and first he started doing work in the Regional Office at Patna from 01.09.1995. In para-20 this witness categorically stated that he was sent to the Buxar Branch of SBBJ from Regional Office but he has no paper of this facts because he was orally sent to the Buxar Branch. This witness categorically stated in para-21 of the cross-examination that he has submitted petitions to the senior manager of the bank for his permanent appointment.

8. On the other hand management examined altogether three witnesses M.W-1 Haiment Kumar Prasad, the Branch Manager of SBI Branch, RBSS, Road Branch who deposed before this tribunal on 17.05.2018 who stated before this tribunal he was posted in Buxar Branch from 20.07.2016 to 07.08.2017 as a Branch Manager and he was posted at that branch prior to merger and later on 01.04.2017 five other banks merged in the SBI (Sisters Bank). This witness further stated that former Branch Manager and one officer Deepak Chandra Srivastava has apprised me about Jawahar Kumar. This witness further stated that when he received a notice from this tribunal he came to know Jawahar Kumar has filed a petition for the regularisation of his service for the post of messenger in this tribunal. This witness also stated that he came to know from Jawahar Kumar he was also engaged in the Regional Office of SBBJ. This witness further stated that Jawahar Kumar was doing the cleaning work of the branch and he also discharged the work of vouchers stiching and other Misc. work as and when required he joined Buxar Branch at that time one officer, two clerk and one guard were posted their. This witness further stated that Jawahar Kumar used to discharged his duties of cleaning two and half hour of the branch and when ever bank took other work he stayed at the bank for 5-6 hours. This witness further stated that Jawahar Kumar used to furnish a petition for his work @ of daily wage some

time weekly and some time on completion of 10 days then his wages was paid accordingly. This witness further stated that he can't say Jawahar Kumar was doing work in the bank for the last 15 years. His head office never asked the names of daily wager of the branch. This witness further stated that Jawahar Kumar was never filed any petition for his regularisation of his service during his tenure. This witness further stated that he called Jawahar Kumar in the branch as and when required.

In cross-examination this witness categorically stated that he admits that he was the employee of SBBJ and during his tenure at Buxar Branch no messenger was posted there. In para-19 of the cross-examination this witness admits that he used to pay Rs.150/ to 160/- as daily wage to Jawahar Kumar and some payment was made for the other works @ of Rs.280/- per day. This witness admits in para-20 of cross-examination that Jawahar Kumar was sent for the cash remittance and for which he was paid and he proved the voucher for the work of cash remittance of date 31.03.2017 @ in his pen and signature as Ext.-W. He also proved the payment voucher of dt-31.03.2017 amounting Rs. 3640/- i.ein his pen and signature to paid Jawahar Kumar as Ext.-W/1. He also proved the payment vouchers from 26.02.2016 onwards paid to Jawahar Kumar as Ext.-W/2 to W/2-29 respectively. In para-23 of the cross-examination this witness admits that Jawahar Kumar discharged his duties at the order of Branch Manager. In para-25 of the cross-examination this witness categorically stated that he has no knowledge whether SBBJ had formulated any scheme for the regularisation of daily rated workers and he categorically denied that the Central Office, Jaipur has asked the list of temporary worker for the regularisation of their services and he did not sent the same and in para-27 of the cross-examination this witness categorically stated that this is not fact Jawahar Kumar used to bring keys of the bank from the residence of Branch Manager and he remained in the bank premises from 9.30 A.M to closing of the bank. This witness admits in para-28 of the cross-examination on requirement some time Jawahar Kumar did the work of voucher stitching and note stitching.

9. M.W-2 Shiv Nath Kumar is an Assistant in S.B.I, who deposed before this tribunal on 17.07.2018. This witness stated before this tribunal that he was posted in Buxar Branch from 18.12.2015 to 01.07.2018 prior to the merger of the bank while he was serving in Buxar Branch, Jawahar Kumar was also posted there. This witness further stated that when the notice is received from the tribunal he came to know Jawahar Kumar has filed a case for regularisation of his service. This witness further stated that Jawahar Kumar was doing the cleaning work of the bank premises and also discharged the duties of placing files at different counters. He used to come in the bank at 09.45P.M. This witness further stated that Jawahar Kumar used to furnish a petition for his payment accordingly he was paid by the bank. This witness further stated that he does not know Jawahar Kumar was doing the work in the bank for the last 15 years. He also can't say, head office had asked the list of casual workers of his branch. This witness further stated that Jawahar Kumar never filed any petition for his regularisation and when he was posted in Buxar Branch. There was four staffs, two officers and two clerk.

In cross-examination this witness admits that in para-11 that he joined the SBBJ at Sawnwar Branch of Udaypur on 01.06.2013. This witness also stated in para-12 of the cross-examination that he is not well aware of the full facts of the case and he can't say about first day and last day of working of Jawahar Kumar. In para-14 of the cross-examination this witness categorically stated that during his tenure at Buxar Branch there was no messenger / sweeper except Jawahar Kumar and he further stated in para-15 of the cross-examination that he does not know Jawahar Kumar was retrenched from service from 11.12.2017. In para-17 of the cross-examination this witness categorically admits that some time Jawahar Kumar was sent for the cash remittance by the Branch Manager for which he was paid and this witness further proved the voucher i.e issued by the then Branch Manager and was signature of Jawahar Kumar receiver that is marked as Ext.-W/3. He has also proved the vouchers of dt- 05.07.2017 paid to Jawahar Kumar for the conveyance charges and further proved the voucher dt- 05.07.2017 amounting Rs. 4950/- for the cleaning of the branch over which the then Branch Manager and Jawahar Kumar put their signature on both the vouchers marked as Ext.-W/4 & W/5 respectively. In para-20 of the cross-examination this witness categorically stated that he never saw any other person than Jawahar Kumar doing the work of cleaning in the Buxar branch.

10. M.W-3 Sanjay Nath Charan is a Branch Manager of SBI, who deposed before this tribunal on 27.09.2018 this witness stated before this tribunal that he was posted at Punchmukhi branch of Buxar on 04.08.2017 and at that time two officers, two assistant and one guard were posted. This witness also stated that during his tenure at Punchmukhi branch Jawahar Kumar was also posted and he came to know about the Jawahar Kumar from the Branch Manager. This witness further stated that the claim of Jawahar Kumar, he was working as messenger is totally false. Jawahar Kumar was doing cleaning work as and when required and he used to discharge the duties 1-2 hours. This witness further stated that on the petition of Jawahar Kumar regarding his payment, the wage payment was paid accordingly. This witness further stated that he has no knowledge that Jawahar Kumar was serving in the bank for the last 15 years. This witness also stated that Jawahar Kumar was never filed any petition for the regularisation of his service in the bank. This witness further stated that he was remained in Punchmukhi Branch of Buxar till May 2018 and when he transferred from that branch Jawahar Kumar was not working.

In para-11 of the cross-examination this witness categorically stated that he does not know, Jawahar Kumar was posted at the Regional Office of the SBBJ prior to doing worked Punchmukhi Branch. In para-12 of the cross-examination this witness admits that he know this facts, Jawahar Kumar filed this case for regularisation of his service. This witness categorically stated in para-13 of the cross-examination that he can't say about the first day and

last day of working of the Jawahar Kumar. In para-14 of the cross-examination this witness stated that this is not fact after reference case Jawahar Kumar was retrenched from the service after 08.12.2017. In para-15 of the cross-examination this witness categorically stated that no appointment letter was issued to the Jawahar Kumar and no termination letter was given to him. In para-17 of the cross-examination this witness categorically admits that during his tenure Punchmukhi Branch of Buxar there was no messenger and part time sweeper in the said branch. In para-18 this witness admits that Jawahar Kumar was paid Rs. 200/- - Rs. 300/- per day wages but Jawahar Kumar did not discharge any duty of messenger. In para-21 of the cross-examination, this witness admits that during his tenure the payment to Jawahar Kumar fortnightly and he further proved the payment voucher dt- 25.09.2017 for the working of 01.09.2017 to 15.09.2017 i.e issued in his signature, this payment was credited in the account of Jawahar Kumar @ Rs.450/-per day, which has been marked as Ext.-W/6. In para-22 of the cross-examination this witness categorically stated that he has no knowledge, whether Jawahar Kumar was served any notice, notice pay or retrenchment compensation before retrenchment. In para-24 of the cross-examination that this witness stated that this is not fact that Jawahar Kumar has discharged his duties regularly at the bank branch and this is also not fact that he has discharged worked as and when required.

11 It is argued from the workman side, that Jawahar Kumar, the workman was orally appointed to discharge the duties of a peon / messenger w.e.f 01.09.1995 to 14.08.2013 at Regional Office of SBBJ, Patna. and he discharged all the duties of the peon / messenger from 9.30 A.M to 6.00 P.M,later on he was shifted to Buxar Branch on 16.08.2013 in the same capacity. It is further argued that initially the workman was paid wages @ Rs. 275/- per day while working at Buxar Branch. This facts is thoroughly corroborated by Jawahar Kumar himself before this tribunal by way of oral evidence and he has also filed some documentary evidence regarding his vouchers i.e proved by the management witnesses i.e marked as Ext.-W the cash remittance dt- 31.03.2017 for cash remittance voucher and Ext.-W/1 the payment voucher dt-.31.03.2017 amounting Rs. 3640/- and Ext.-W/2 to W/2-29 series the payment vouchers paid to Jawahar Kumar after 26.02.2016 for his different work. The payment voucher clearly establish Jawahar Kumar was doing his duty at the Buxar Branch of SBBJ later on after merger it was SBI before stopping him to discharge duties on 08.12.2017. It is further argued that the management witness categorically admitted that there was no peon and cleaning staff posted at the Buxar Branch that's why the Branch Manager took the services of Jawahar Kumar of different nature. It is also argued that the management bank did not produce any witness from the Regional Office that could controvert the assertion of workman he was doing duties at SBBJ from 1995 to 14.08.2013. It is further argued that when the workman raised dispute for the regularisation of his service and thereafter he was stopped from doing work at Buxar Branch of SBI on getting notice from the tribunal. The management neither gave any notice, nor given retrenchment compensation, so management violated the mandatory provision of the section-25(F) of the I.D.Act. Moreover, workman has discharged the regular duties for morethan 240 days in 12 calendar months preceding his termination in the Oct.2017 i.e well proved by the payment vouchers placed by the workman from Ext.-W to W/6. It is further argued that there was need of sub-ordinate staff in the Buxar Branch that's why the Branch Manager took the service of Jawahar Kumar regularly because the work of Jawahar Kumar was perennial in nature. It is further argued that taking the services of Jawahar Kumar by the bank for a long time and when he raised dispute for regularisation of his job, he was terminated so management resorted the unfair labour practice as per section 25(T) of the I.D.Act. It is further argued that the workman has thoroughly proved his claim for reinstatement in the service of the bank as a sub-ordinate staff(peon / messenger) and further to regularise his services with all consequential benefits.

12. On the other hand it is argued on behalf of the management side that though the workman has produced some copy of payment vouchers but he did not place any kind of documentary evidence or supporting oral evidence regarding his working at Regional Office of SBBJ from 1995 to 14.08.2013. Moreover, workman claimed is age 32 years at the time of deposition before this tribunal on 29.05.201. He also deposed he started work in Regional Office of SBBJ from 01.09.1995 at that time, as per his assertion he was only eight years of age. No bank to take the services of a minor boy of eight years for the opening the gate placed cash box and registers, this is the totally sweeping and false claim given by the workman just to mislead the tribunal. It is further argued that the witness of the management thoroughly stated in their evidence Jawahar Kumar discharged duties at Buxar Branch as and when required and for which he was duly paid. All the witnesses categorically stated that no appointment letter was issued to the workman and also impressed to the tribunal Jawahar Kumar was never discharged the duties of temporary messenger since no appointment letter was issued to the Jawahar Kumar so there is no question of termination arises. It is further argued that this reference is for a dispute of regularisation of his service without passing any order on the point of termination, no order can be passed on the point of regularisation. It is further argued that there was no employer and employee relationship of the bank of the Jawahar Kumar. Since no proper appointment letter was issued to the Jawahar Kumar so there is no violation of section 25(F) of the I.D.Act. Moreover, workman did not discharge work of 240 days in a calendar year because workman was engaged on daily wages basis as and when required that was duly reported by the management witness before this tribunal. It is further argued that the workman was paid on daily wage basis and he was never in continuous employment by the bank at any time during the alleged period so non engagement would not be retrenchment U/S-2(oo) of the I.D.Act. It is further argued that since there was no employer and employee relationship with the workman. So there is no violation of 25(T) of the I.D.Act. It is further argued that bank has its own recruitment rules of selection of sub-ordinate staff. No branch officer is competent to engage the

workmen taking his service as a temporary peon of messenger save and except for cleaning purposes of the branch as a daily wager. It is further argued that by the management side the Hon'ble Apex Court clearly held in State of Karnataka and others Vs. Uma Devi case there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post. It is further argued from the management side it is held in Union of India &Ors. Vs Ilmo Devi &Anr., Civil Appeal No.- 5689-5690 of 2021 that " Part Time Employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employee as held. Part time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principles of equal pay for equal work. Accordingly on the basis of evidence as placed by the management workman is not entitled to regularization or reinstatement in the service of the bank.

13. Considering all the facts and the materials available on the record as placed by rival parties and considering the submissions as advanced on behalf of the both the sides, this tribunal finds that the workman Jawahar Kumar claimed initially he was engaged at the Regional Office of SBBJ, Patna from 01.09.1995 and he remained there till 14.08.2013 and he was discharging the duties of messenger including cleaning work of the premises and other assigned work by the management bank. This facts is narrated by the workman in his statement of claim and in his evidence before this tribunal. However, the management bank denied this claim of the workman,as he was ever engaged at the Regional Office of SBBJ, Patna because no documentary proof is given by the workman before this tribunal. Moreover, no other oral evidence is placed by the workman in this regard. This tribunal finds that the workman who deposed before this tribunal on 29.09.2019 and he claims his age 32 years meaning there by he was barely 8 years at the time of engagement as SBBJ, Patna Regional Office on 01.09.1995 that looks absurd and not reliable at all because no Regional Office or a schedule bank can engage any person below 18 years of the age as a casual or temporary worker. Further this tribunal finds that not a single chit of paper has been produced by the workman Jawahar Kumar to suffice this claim he was working at the Regional Office of SBBJ from 01.09.1995 to 14.08.2013 and workman also failed to produce other oral evidence on this facts, so statement of the workman he was working at the Regional Office of the SBBJ from 01.09.1995 to 14.08.2013 is not convincing and reliable. This tribunal further finds that the workman Jawahar Kumar also claims he was also engaged at the Buxar Branch of SBBJ from 16.08.2013 to 08.12.2017 before stopping him to discharge duty in the said branch by the then Branch Manager. On the other hand the management bank admitted this facts that the bank took the services of workman Jawahar Kumar during this period on as and when required basis. He never discharged continuous working there. However, workman through his oral evidence and documentary evidence reported to this tribunal he was discharging the duties at the Buxar Branch at the instruction of the then Branch Manager cleaning work, vouchers and notes stitching and some times postal work and cash remittance work and he was getting payment through vouchers by the management bank. This tribunal finds that the workman has furnished copy of the some payment vouchers i.e Ext.-W the payment voucher amounting to Rs. 150/- for the purpose of cash remittance work of dated- 30.03.2017 and Ext.-W/1 the payment voucher of Buxar Branch amounting to Rs. 3640/- for the Misc. work done by the Jawahar Kumar from 16.03.2017 to 31.03.2017. This tribunal further finds that workman Jawahar Kumar also produced some payment voucher regarding Misc. work at the Buxar Branch i.e from period of 20.08.2016 to 31.03.2017 i.e marked as Ext.-W/2 to W/2-29 and this is dully proved by the management witness M.W-1. These vouchers indicates, Buxar Branch of SBBJ took the services of workman Jawahar Kumar from cleaning of the premises to other Misc. work for which the bank paid to the Jawahar Kumar.It does also show that Jawahar Kumar was engaged by the management bank for the different works, because there was no permanent peon / messenger / PTS posted at that Branch during the period of August 2013 to 08.12.2017 that is admitted by management witness too. Hence the claim of the management bank the services of workman Jawahar Kumar was taken as and when required is not acceptable at all. Ext.-W/3 is the voucher amounting to Rs. 150/- paid to Jawahar Kumar for the cash remittance work done by him on 29.06.2017 and the Ext.-W/4 is the payment vouchers for the conveyance purposes paid to Jawahar Kumar for the workman of 30.06.2017 and payment voucher of dt- 05.07.2017 amounting to Rs. 4950/- (Ext.-W/5) i.e paid to the Jawahar Kumar for the cleaning of the branch and Misc. work from 16.06.2017 to 30.06.2017. These three documents is proved by M.W-2 Shiv Nath Kumar. Ext.-W/6 is the payment voucher of dt- 25.09.2017 amounting to Rs. 6750/- paid to Jawahar Kumar for the Misc. work from 01.09.2017 to 15.09.2017 @ Rs. 450/- per day. These payment voucher clearly establish that bank was taking the services of Jawahar Kumar continuously not on as and when required basis because there was no sub-staff posted at the Buxar Branch of SBBJ. Moreover, work of sub-staff is a pennerial work in any bank's that why management bank took the services of Jawahar Kumar. This tribunal finds that the oral and documentary evidence as produced by the workman clearly established this fact that he was engaged by the management bank of Buxar Branch from 16.08.2013 to 08.12.2017 and this is more or less admitted by witnesses of the management before this tribunal at the same time they also admit there was no sub-staff or PTS posted in the Buxar Branch of management bank. The management bank also did not place any authentic evidence that could show the management bank took the services of other persons other than Jawahar Kumar.So the claim of the management bank the services of Jawahar Kumar was taken at Buxar Branch during August 2013 to December 2017 on as and when required basis can't be believed. So the claim of the workman, he was continuously engaged at Buxar Branch of the management bank right from 16.08.2013 to 08.12.2017 is duly established because there was no Sub-staff / PTS / Messenger posted at the Buxar Branch of the management bank that's why management bank took the services of

workman Jawahar Kumar of different nature that can be discharged by only a sub-staff of the any bank.This tribunal further finds that the management side strongly denied the claim of the workman Jawahar Kumar disclosing he was engaged as a temporary worker but on need based and management also tried to pacify this plea through some judgement of the Hon'ble Apex Court as discussed above in the argument by the management representative the management bank argued no temporary worker gets absorption without going through the recruitment process of the bank and temporary worker has no right to claim for his regularisation in the service even a worker has discharged duties for a long time but these ruling are not applicable to the instant case as considering the total scenario of this dispute as raised by the workman and thereafter reference was sent by the appropriate Govt.. This tribunal finds that this is the consistent stance of the workman Jawahar Kumar, he was engaged orally in the Buxar Branch of SBBJ now called SBI from 16.08.2013 to 08.12.2017 when he was stopped from doing work there and this is thoroughly proved by the workman through oral and documentary evidence, moreover, management witness also supported this fact workman Jawahar Kumar was engaged in the Buxar Branch of the management bank and he discharged different works of the bank and for which he was paid and the management witness also admits that there was no sub-staff or cleaning staff in the Buxar Branch right from 16.08.2013 till 08.12.2017. Evidence of the workman thoroughly establishedthis factsthat he discharged the duties of different nature of Buxar Branch at the instruction of the then Branch Managers continuously this is the clear bank was in need of the service of a sub-staff and management bank took the service of Jawahar Kumar continuously without giving any service condition to him. This tribunal further finds and hold that if a workman discharged the duties continuously for more than 240 days in a one calendar year preceding his termination.He has a right to a demand for his regularisation and he can't be retrenched without notice and notice pay and compensation by the management side. Here in the instant case Jawahar Kumar has discharged his duties at Buxar Branch for more than 240 days in a calendar year right from 16.08.2013 to 08.12.2017 when he was stopped from doing work without having any notice or notice pay this is the violation of section-25(F) and the retrenchment covered U/S-2(oo) of the I.D.Act. This tribunal further finds and hold that while this reference case was pending to adjudicate the issue, not regularising the service of workman Jawahar Kumar by the management bank is justified or not, but in the mean time, workman was stopped from doing work at Buxar Branch on 08.12.2017 for which workman has filed complaint case U/S- 33 (A) of the I.D.Act and that was found correct. Order of that complaint case is separately passed. Termination of the services of Jawahar Kumar by the management bank is certainly amounts an unfair labour practice done by the management bank as per section- 25(T) of the I.D.Act. This tribunal further finds and hold that in any banking system trust of an employee is very important while discharging any duty either by permanent staff or by temporary staff. Here in the instant case Buxar Branch of the management bank was in need of the service of sub-staff because there was no permanent sub-staff that's why management bank took the services of the Jawahar continuously right from 16.08.2013 to 08.12.2017 because of trust he reposed in the management bank and hence his claim for regularisation in service is justified and since the management stopped workman doing work from 08.12.2017 while this reference case was pending hence the workman is also entitled for his reinstatement in the service of the bank from 08.12.2017 and for his regularisation in the services.

14. On the ultimate analysis of all the facts and the material available on the record as discussed above this is the considered opinion of this tribunal that the action of the management not to regularise the services of workman Jawahar Kumar is not justified and further retrenchment from the service from 08.12.2017 is also not justified, accordingly management is directed to reinstate the workman Jawahar Kumar in the services of bank and to regularise his service from 08.12.2017 as per his qualification for post of sub-staff with all consequential benefits within the period of two month of publishing of the gazette of the award.The order the passed in the complaint case no.- 02(C) of 2018 that is related to this reference case is annexed with this award (i.e part of the award).This award is effected after date of publication in gazette.

This is my award accordingly.

05.04.2024

MANOJ SHANKAR, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1190.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (100/2004) प्रकाशित करती है।

[सं. एल–12012/90/2004-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.100/2004*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen.

[No. L-12012/90/2004-IR (B. II)]
SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/100/2004

Present: P. K. Srivastava

H.J.S..(Retd)

Umakant Yadav
S/o. Ramkripal Yadav
R/o. Bhuibandh, Ward No.-30,
Shahdol (MP)

Workman

Versus

The Regional Manager
Central Bank of India, Ahuja Market
Shahdol (M.P.)

Management

A W A R D

(Passed on this 24th day of April -2024.)

As per letter dated 03/09/2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-12012/90/2004-IR(B-II) dt. 03/09/2004. The dispute under reference related to :-

"Whether it is a fact that Shri Umakant Yadav S/o. Ramkripal Yadav was engaged as a peon by the management of Central Bank of India during the period from January 1995 to March 2003 ? If so, whether the action of management of Central Bank of India Regional Office Shahdol in terminating the services of Shri Umakan Yadav S/o. Shri Ramkripal Yadav is legal and justified ? If not, what relief the workman is entitled to ?"

After registering the case on reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

According to the workman, he was appointed by the management in January 1995 as a peon and worked continuously till 18.03.2000 when his services were terminated without any notice or compensation. During his service tenure he was required to discharge all the duties of the peon and also other manual works performed by a Class-IV Employee. The work was of a permanent nature though he was appointed on daily wage basis. He was paid wages on vouchers drawn in his name and in various fictitious names like Kishan Lal, Veerbhan, Ram Lakhan, Sunil and Ramesh just to deprived him of protection under the various statues including the Industrial Disputes Act 1947 (in short the 'Act') and bipartite settlements. He raised a dispute against his illegal termination which was in violation of Section 25-G and 25-H of the Act. After failure of conciliation, the reference was sent to this Tribunal. The workman has thus prayed that he be held entitled to be reinstated with all back wages and benefits setting aside his disengagement.

In its written statement of defense, the bank has denied the engagement of workman in any capacity and had pleaded that there are certain recruitment procedure for recruitment of drivers and other employees. According to the management the workman was never appointed against any regular post following recruitment procedure. In fact he was purely engaged as a casual labour subject to availability of work. He never worked continuously for 240 days in an year, hence his disengagement is not in violation of the Act. Accordingly, the bank has requested that the reference be answered against the workman.

The workman has filed his affidavit as his examination in chief on which he has been cross examined by management. He has filed and proved photocopy document which is Ex. W/1. Management has also filed affidavits of its witnesses who has been cross examined from the side of workman.

I have heard argument of Mr. Arun Patel learned Counsel for workman and Mr. Sudeep Chatterjee learned Counsel for Management Bank. I have gone through the record as well.

From perusal of record in the light of rival arguments, following issues arise for determination.

1. Whether the workman has successfully proved his continuous engagement by bank for 240 days and more within an year ?
2. Whether, the disengagement of the workman is in violation of Section 25-G, 25-F and 25-N of the Act ?
3. Whether the workman is entitled to any relief ?

Issue No.-1 & 2 :-

Since, both the issues are inter connected, they are being taken together. Pleadings of the parties on these issues have been detailed earlier. The workman has corroborated his case on these issues in his affidavit as his examination in chief. In his cross examination, he has stated that he was issued an appointment letter which he never filed. He further states that he was engaged by the Branch Manager and admits that he was paid in different names. There are certain photocopy documents filed by him but not proved which show that different daily wagers were paid their wages by the bank at different point of time. His case that he was paid in different fictitious names though it was he only who worked all the time, cannot be taken to corroborate his case because if it true that he received payments in fictitious names, I am afraid this is impersonation. His certificate issued by the Branch Manager Ex. W/1 is also of no help to him because firstly it is not issued by a person authorized and original has not been filed. There can be dispute that since the original was given to the workman, it was in his possession. The management witness has stated that the workman was a daily wager who was called for worked as and when required. He never worked continuously for 240 days in any year.

The above description of statements and document is in no way be held sufficient to prove the engagement of the workman for 240 days in any year. Hence, his disengagement also cannot be held in violation of the Act. Hence, holding the continuous engagement of the workman for 240 days not proved, issue no.-1 & 2 are answered accordingly.

Issue No.- 3 :-

In the light of finding recorded on issue no.-1 & 2, this issue is answered against the workman.

In the light of above observations and findings, the reference deserves to be answered against the workman and is answered accordingly. No order as to cost.

DATE: 24/04/2024 P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1191.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **सेंट्रल बैंक ऑफ इंडिया** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (246/1999) प्रकाशित करती है।

[सं. एल –12012/90/1999-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.246/1999) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen.

[No. L-12012/90/1999-IR (B-II)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/246/1999

Present: P. K. Srivastava

H.J.S..(Retd)

The Assistant General Secretary
Central Bank Employees Union,
C/o Central Bank, MICI Extn. Counter,
54, Paras Building, Jabalpur (MP)

Workman

Versus

Central Bank of India
The Regional Manager, CBI
Regional Office, 601, Napier Town
Jabalpur (MP)

Management

(J U D G EM E N T)

(Passed on this 08th day of May 2024)

As per letter dated 06/07/1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/90/1999 IR(B-II) dt. 06/07/1999. The dispute under reference relates to:

"1. Whether the management of Central Bank of India is justified in imposing the penalty of stoppage of one annual increment upon Shri Ravi Prakash Agrawal, Clerk cum Typist ? If not, what relief the workman is entitled to ?

2. Whether the management is justified to deny the annual increment due to the workman during the period of suspension from 13.04.1993 to 14.04.1994, if not, what relief is the said workman entitled to ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. The parties appeared and did not filed their respective Statement of Claim and Defense.

The case of the workman is mainly that he was served with a letter of suspension by the Regional Manager of the Bank on 08.04.1993 advising him that a fraud of Rs. 90,000/- had taken place in SB Account No.- 8459 at Branch Garha, Jabalpur while he was working as Cashier in the branch. He was kept under suspension from 13.04.1993 to 12.04.1994 pending charge sheet and enquiry. He was served a charge sheet on 30.09.1994 alleging following misconduct against him :-

1. *Doing an act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss which is major misconduct under para 19.5(j) of Bipartite Settlement.*
2. *Breach of any rule of business of the Bank or instruction for the running of the department, a misconduct under Clause-19.7 (d) of the Bipartite Settlement.*

Being not satisfied by his reply on the charge sheet, the management decided to conduct a departmental enquiry which was conducted not according to the Bipartite Settlement and Memorandum of Settlement 2002. The Enquiry Officer wrongly recorded a finding that the misconduct was proved. The Disciplinary Authority wrongly relied on the finding of the Enquiry Officer and passed the impugned order of punishment against law.

The workman side prayed that setting aside the impugned punishment order, the workman be held entitled to annual increment stopped by the management by the impugned punishment order and also be held entitled to get annual increment for the period of his suspension from 13.04.1993 to 12.04.1994 with all consequential benefits.

Rebutting the case of the workman, **management has taken a case** that the departmental enquiry was lawfully conducted, the Enquiry Officer correctly recorded his findings and the Disciplinary Authority also rightly passed the impugned punishment order. Management has prayed that the reference be answered against the workman.

On the basis of pleadings a preliminary issue was framed by my learned Predecessor as follows:-

"*Whether enquiry conducted against workman is legal and proper ?".*

On the basis of evidence on record, this issue was decided by my learned Predecessor vide his order dated 04.04.2014 holding the departmental enquiry legal and proper. Following other issues were framed as follows :-

1) ***Whether, the alleged misconduct is proved from evidence in enquiry proceedings ?***

2) ***Whether, the punishment of holding one increment of workman Shri Ravi Prakash Agrawal is legal and proper ?***

3) ***If so, to what relief the workman is entitled to ?***

Final award was passed by my learned Predecessor on 13.04.2016. The charges of minor and major misconduct were held not proved from evidence in enquiry proceedings, the punishment of withholding one increment was held against law and improper and the management was directed to released one increment and pay wages to the workman for the period of suspension deducting the subsistence allowance within 30 days from the date of the notification of the Award in default 9% interest per annum from the date of Award till its realization.

The management Bank preferred W.P. No.- 18332/2016 against this award which was finally decided by Single Bench of Hon'ble High Court of M.P. at Jabalpur vide order dated 01.08.2023. The Hon'ble High Court observed that finding of my learned Predecessor that the conclusion of Enquiry Officer about the negligence of the workman in duty was not supported by cogent evidence was recorded against law. It was further observed that departmental enquiry is to be conducted on preponderance of probabilities and not on strict proof of guilt. Also it was observed that the finding in the award was recorded without considering the entire record as well as the evidence of parties in its entirety. Even if, the payment was authorized by Mr. S.N. Verma, it will not absolve the respondent (the workman) from its liability. The award was set aside and the matter was remanded back for a fresh decision. It is in compliance of the said order this case has been heard again.

The management filed original documents with respect to the departmental enquiry taken on record. These documents are not disputed by the workman side.

I have heard argument of learned Counsel Mr. Pranay Choubey for workman and Mr. S.K. Gautam learned Counsel for Management. Management has filed written argument also, which is part of record. I have gone through the record as well the written arguments.

Issue No.-1 :-

As the order of Hon'ble High Court referred to above, states, the finding of my learned Predecessor with regard to legality of the departmental enquiry has not been disturbed. Also, it comes out from perusal of record that out of the charges of misconduct leveled by management in the charge sheet dated 30.09.1994 against the workman, **charge with respect of negligence by the workman in discharge of his duties was held proved by the Enquiry Officer**. **The remaining charges regarding gross negligence which is major misconduct, were held not proved against the workman. The Enquiry Officer observed that the workman was thus found guilty of ignoring the absence of signatures of the Teller Clerk on MEx1 and MEx2 in token of withdrawals dated 04.12.1992 and 15.01.1993 having been posted in ledger. He also observed that it was evident that the workman failed in bringing this fact to the notice of the Head of Department thus according to the Enquiry Officer charge against the workman was proved only in respect to negligence in discharge of his duties.**

Regarding the charge of negligence on the part of the workman resulting into payment of forged withdrawals in HSS A/C 0459 of Smt. Sneh Mishra on 04.12.1992 and 15.01.1993, the Enquiry Officer observed that the workman could not be made liable for the same since he had followed procedure laid down in point 10 page 53 of Manual of Instructions regarding scrutiny by cashiers before payment.

As it comes out from record that the Disciplinary Authority did not agree with the finding of Enquiry Officer that the charge of gross negligence in discharge of his duties, was not proved. The Disciplinary Authority further observed that as per MEx30 which is a certificate issued by Branch Manager and initialed by Mr. S.N. Verma Accountant, debit entry of Rs. 60,000/- dated 04.12.1992 was made by the Teller Clerk Prabha Shukla in the passbook of Smt. Sneh Mishra on 20.01.1993 which shows that the passbook did not accompany the withdrawal form. Similarly debit entry of withdrawal of Rs. 30,000/- on 15.01.1993 in the account of Smt. Sneh Mishra was made on 20.01.1993 by the Teller Clerk, which shows that at the time of withdrawal of this amount also, the withdrawal form did not accompany the passbook. Disciplinary Authority further observed that the workman could not be absolved for his lapses in making payment of MEx1 & MEx2 without passbook when there was no such request from the account holder.

I am not inclined to agree with this finding of the Disciplinary Authority because the question arises as to whether the rules made it obligatory on the workman, who was a cashier at that time, to ensure the production of passbook at the time of disbursal of the amount withdrawn. Clause-10 of the Manual, referred to by the Enquiry Officer in his enquiry report is being reproduced as follows:-

Clause-10 :- **Scrutiny by cashiers before payment –**

When the cashier receives cheque/withdrawal forms from saving department for payment, he should initial in the cash payment book and take the instruments. He should verify that all such payments are approved by the authorized officer. Before handing over cash, paying cashier should asked the presenter of the token to state orally the amount to be received by him (this ensures that payment is not made to the wrong person or wrong amount). Then he should obtain the signature of person receiving cash on the over leaf of the instrument and match the signature on the over leaf of presenter, who must have signed ones at the time of receiving token.

During the enquiry proceedings, statement of management witness no.-1 and his cross examination also require to be mentioned, this witness states that both the instruments were posted by Prabha Shukla Teller Clerk in the ledger there are two signature of the account holders, the token number and the denomination of notes. He also admits that the instruments were passed for payment by Shri S.N. Verma Accountant.

When the workman, who was working as a cashier at that time, was not obligated under any rule or circular to insist on production of passbook at the time of disbursal of amount with regard to any instrument, cleared for payment by the concerned authority. He could not be expected in law to insist on production of passbook at the time of disbursal of amount. Hence, his non insistence regarding production of passbook at that time could not be termed as gross negligence. After all, negligence is failure in duty to take care. For establishing charge of negligence, it should be proved that there was a duty on part of the person charged of negligence to take care. Hence, in the light of above discussion, the observation of the Disciplinary Authority that the charge of gross negligence was proved against the workman is held to have been recorded on conjunctures and surmises and cannot stand the scrutiny of law. This charge is held not proved.

Issue no.-1 is answered accordingly.

Issue No.-2 :-

In the light of finding on issue no.-1, the punishment order passed by the Disciplinary Authority and the Appellate Authority so far as to it relates with respect to the charge of gross negligence is liable to be set aside and is set aside accordingly. However, the punishment with respect to the charge of negligence under Clause-19.5(j) of Bipartite Settlement is held to have been passed as per law and fact.

Issue no.-2 is answered accordingly.

Issue No.-3 :-

In the light of above discussion and findings, the punishment order passed by the Disciplinary Authority, confirmed by the Appellate Authority with respect to withholding of one increment of the workman is liable to be set aside. The punishment order with respect to censuring the workman for minor misconduct of negligence is liable to be affirmed.

Issue no.-3 is answered accordingly.

In the light of above discussion, following Award is passed.

A W A R D

Holding the punishment order regarding stoppage of one increment upon the workman unjust and improper, the workman is held entitled to get his one increment held by management and all consequential in service and post retiral benefits accordingly to be computed and paid to him within 30 days from the date of publication of the Award in official Gazette, failing which interest @ of 8% from the date of Award till payment.

The action of management in awarding censure entry for the charge of minor misconduct of negligence and holding the increment for his suspension period from 13.04.1993 to 12.04.1994 is held just and legal. No order as to cost.

DATE: 08/05/2024 P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1192.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **केनरा बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (38/2011) प्रकाशित करती है।

[सं. एल -12012/65/2010-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.38/2011*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen.

[No. L-12012/65/2010-IR (B. II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/38/2011

Present: P.K.Srivastava

H.J.S..(Retd)

Dalchand Biyani
S/o. Motilal Biyani,
68, Kotwali Road,
Bhopal (MP)

Workman

Versus

Branch Manager
Canara Bank
Berasiya Road,
Bhopal (MP)

Management

(J U D G EM E N T)

(Passed on this 18th day of April 2024)

As per letter dated 11/05/2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/65/2010 IR(B-II) dt. 11/05/2011. The dispute under reference relates to:

"Whether the action of the management of Branch Manager, Canara Bank in terminating the agency of Shri Dalchand Biyani w.e.f. 22.11.2002 is justified ? What relief the workman is entitled for ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. The parties appeared and did not filed their respective Statement of Claim and Defense.

The case of the workman is mainly that he was appointed by the management bank in the year 1976 as Deposit Collector and was paid his salary as well allowances by the bank which was Rs. 750/- per month salary and commission as well subsidy on collection @ of 2%. He continuously worked as Deposit Collector till 22.11.2002 when his services were illegally terminated by the bank without paying any compensation which is in violation of Section 25-F, 25-G of the Act. Rule 76 and 77 of Industrial Disputes (Central) Rules 1957, hereinafter referred to by the word "Rules", were also violated by not preparing seniority list by the management. One Devi Singh Rajput whose services were also terminated was re-engaged in violation of Section 25-H of the Act. The workman has thus prayed that holding his termination against the Act, he be held entitled to be reinstated with back wages and benefits.

The management has taken a case that a scheme for small deposits named as New Nitya Nidhi Deposits was introduced by the bank and to encourage the members of public, the workman was engaged as deposit collector to work as an agent of the bank. Terms and Conditions of the agreement dt. 19.11.1983 regulating the agency of the workman were accepted unconditionally and signed by him. These terms and conditions agreed at between the parties have mentioned in para 2.1 of the written statement of bank. This is also the case of management that while acting as deposit collector, the workman misappropriated amounts collected from the customers which he unconditionally admitted in writing vide his letter dated 13.11.2002 and 16.11.2002, hence, his agreement/agency was terminated, hence, no illegality committed by bank in terminating his agency. He never deposited the money collected by him from various depositors details mentioned in para 2.2 of the written statement. Furthermore his claim is barred by delay and latches on his part. According to management bank, since he was under agreement, there is no violation of the Act in terminating his agency because he is not a workman as defined U/S. 2(s) of the Act. Accordingly, management has sought that the reference be answered against the workman.

In evidence the workman has filed and proved photocopy of his identity card he has filed his affidavit as his examination in chief. Management has cross examined him. Management has filed the affidavit of its witness who never turned up for cross examination.

None appeared for management at the stage of argument, hence argument of learned Counsel for workman were heard by me. I have gone through the records as well.

Learned Counsel for the workman has relied on Judgment of Supreme Court in the case of ***Indian Banks Association vs. The workmen of Syndicate Bank & Others*** AIR 2001 SC 946, in which it has been held that the deposit collectors are workman as defined in Section 2(s) of the Act, though not entitled to be considered for absorption as regular cadre. In the light of this discussion, the case of management that the applicant being deposit collector is not workman U/S. 2(s) of the Act fails and the applicant is held workman as defined U/S. 2(s) of the Act.

The second leg of argument that the workman was paid salary by bank also fails because in his cross examination, the workman has admitted that there was an agreement regulating the terms and conditions between him and the bank signed by both before his appointment as deposit collector which is the case of the bank.

In his cross examination the workman has stated that he had signed letters admitting misappropriation of the money collected by him from the depositors by not depositing it with the bank but not voluntarily rather under pressure by the manager. In absence of any material on record to indicate that he brought this fact into notice of anyone renders his this statement not so reliable. This is the case of management that he had misappropriated the money collected from the depositors by not depositing with the bank and made in writing admissions in this respect.

Section 2(oo) of the Act which defines retrenchment is being reproduced as follows :-

"retrenchment" means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;"

Since, the termination of agency of the workman was result of disciplinary action, it cannot be held retrenchment as defined above. Needless to say there was no occasion of conducting an enquiry when the workman himself admitted his misconduct.

In the light of above discussion and findings, the reference deserves to be answered against the workman and is answered accordingly. No order as to cost.

DATE: 18/04/2024 P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1193.—औद्योगिक विवाद अधिनियम 1947 ;1947 का 14 द्ध की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक, **केनरा बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (42/2022) प्रकाशित करती है।

[सं. एल -39025/01/2024-आई आर (बी-II)-23]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.42/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank/ Canara Bank and their workmen.

[No. L-39025/01/2024-IR (B-II)-23]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/42/2022

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Mahesh Kumar Dhuria S/o. Shri Kawarlal,
Resident of H.no. 07, Ward 09,
Harijan Basti, Narsinghgarh,
Rajgarh (M.P.) - 465669

Workman

Versus

The Mukhya Prabhand Nedeshek,
Syndicate Bank / Canara Bank,
Corporate Officer, Gandhi Nagar,
Bangalore (Karnataka) – 560009

Management

A W A R D

(Passed on this 15Th day of March-2024.)

As per letter dated 01/09/2022 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number J-1(1-9)/2022-IR dt. 01/09/2022. The dispute under reference related to :-

"क्या श्री महेश कुमार धुरिया कर्मकार को मैसर्स सिंडीकेट बैंक / केनरा बैंक द्वारा आवेदक के काम से निकाला जाना न्यायोचित है? यदि नहीं, तो उक्त कर्मकार को कब से और किन लोगों के साथ नौकरी पर पुन: बहाल किया जाना चाहिए"?"

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of allotment of time and service of notice , the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of workman not proved the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 15/03/2024 P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1194.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक, **केनरा बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (41/2022) प्रकाशित करती है।

[सं. एल -39025/01/2024-आई आर (बी-II)-22]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.41/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank/ Canara Bank and their workmen.

[No. L-39025/01/2024-IR (B-II)-22]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/41/2022

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Sagar Tamoli S/o. Shri Sanjay Tamoli,
Resident of H.no. 24, New Quarter,
Nehru Colony, Mata Mandir, Tehsil – Hujur,
Dsit. Bhopal (M.P) - 462003

Workman

Versus

The Mukhya Prabhand Nedeshek,
Syndicate Bank / Canara Bank,
Corporate Officer, Gandhi Nagar,
Bangalore (Karnataka) – 560009

Management

A W A R D

(Passed on this 15Th day of March-2024.)

As per letter dated 01/09/2022 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number J-1(1-8)/2022-IR dt. 01/09/2022. The dispute under reference related to :-

"क्या श्री सागर तमोली कर्मकार को मैसर्स सिंडीकेट बैंक / केनरा बैंक द्वारा आवेदक के काम से निकाला जाना न्यायोचित है? यदि नहीं, तो उक्त कर्मकार को कब से और किन लोगों के साथ नौकरी पर पुन: बहाल किया जाना चाहिए"?"

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of allotment of time and service of notice , the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of workman not proved the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

DATE: 15/03/2024 P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1195.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **एच डी एफ सी बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (24/2020) प्रकाशित करती है।

[सं. एल -39025/01/2024-आई आर (बी-II)-21]

सलोनी, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1195—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.24/2020*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of HDFC Bank and their workmen.

[No. L-39025/01/2024-IR (B-II)-21]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/24/2020

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Maninder Singh Dhillon,
Resident of Village : Sheetalpur,
Post : Dhakoni,
Tehsil : Esagarh,
Disst. Ashok Nagar (M.P.)

Workman

Versus

The Regional Collection Manager,
HDFC Bank,
Third Floor, Star Planet Building,
Plot No. 9, M.P. Nagar Zone-2,
Bhopal (M.P.)

Management

A W A R D

(Passed on this 02nd day of May-2024.)

As per letter dated 07/02/2020 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number J-1(1-19)/2020-IR dt. 07/02/2020. The dispute under reference related to :-

"क्या, एचडीएफसी बैंक प्रबंधन, मुंबई द्वारा आवेदक श्री मनिन्दर सिंह ढिल्लों को बिना आरोप पत्र जारी किए, दिनांक 19/09/2016 के माध्यम से तत्काल प्रभाव से कार्य से बर्खास्त किया जाना उचित है? यदि नही तो उक्त कामगार अपने पूर्व के कार्य पर उसी स्थिति में, बकाया वेतन सहित नियोजन तथा संबंधित अनुतोष पाने के अधिकारी है। "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the Workman to submit his statement of claim. In spite of the allotment of time and service of notice, the Workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

None present, Speed Post notice to the Workman is served on him on 22nd November, 2023 and is served on Management on 20th February, 2021 as per status report downloaded from internet. Parties have not appeared and no pleading filed.

The Initial burden to prove his claim is on the Workman. Since the Workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the Workman not proved, the reference deserves to be answered against the Workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the Workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

DATE: 02/05/2024 P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बर्ड वर्ल्ड वाइड फ़्लाइट सर्विसेज (इंडिया) प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह –श्रम न्यायालय नं0** 1, नई दिल्ली के पंचाट (आई डी नम्बर 96/2021) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/06/2024** को प्राप्त हुआ था।

[सं. एल-11012/15/2021-आई. आर. (सी.एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1196—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 96/2021*)*** of the **Central Government Industrial Tribunal-cum-Labour Court N0.1, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Bird World Wide Flight Services (India) Pvt.Ltd.** and their workmen, received by the Central Government on 13/06/2024.

[No. L-11012/15/2021– IR (CM-I)

MANIKANDAN. N, Dy. Director

ANNEXURE

Before the Justice Vikas Kumar Srivastava (Retd.) Presiding Officer, Government of India Ministry of Labour & Employment,Central Government Industrial Tribunal Cum – Labour Court-I, New Delhi

ID No. 96/2021

Sh. Jeet Kumar,
Through BWFS Airport Karamchari Union (Regd.),
W4, Opp. Kalkaji Bus Depot, Govind Puri,
New Delhi-110019.

Workman…

Versus

M/s Bird WorldWide Flight Services Pvt. Ltd.
E-9, Connaught Circus,
Connaught Place,
New Delhi-110001.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-11012/15/2021-IR(CM-I)) dated 29.06.2021 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the services of the workman Sh. Jeet Kumar has been terminated illegally and unjustifiably by the Management of Bird World Wide Flight Services (India) Pvt Ltd., and if so to what relief the said workman is entitled to and what directions are necessary in this regard?"*

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

DATE: 19/04/2024 Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1197.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं0** 1, नई दिल्ली के पंचाट (आई डी नम्बर **99/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/06/2024** को प्राप्त हुआ था।

[सं. एल–11012/05/2019-आई. आर. (सी एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 99/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court N0.1, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Air India Ltd.** and their workmen, received by the Central Government on ***13/06/2024***

[No. L-11012/05/2019 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

ID No.99/2019

Ms. Bela Nanda

R/o H.no. 2138, Block C-2,

Vasant Kunj,

New Delhi-110070.

Claimant…

Versus

The Chairman/Managing Director,

Air India Ltd.113,

Gurudwara Rakabganj Road,

New Delhi-110001.

Management…

Claimant in person

Shri Vinay Prakash Singh A/R for the management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-11012/05/2019 (IR(CM-I)) dated 05.04.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"i) Whether Ms. Bela Nanda Staff no. 223301 working with the Management of Air India is a workman under Section 2(s) of ID Act, 1947 keeping in view of nature of duties performed by her?

ii) If so, whether the action of the Management of Air India Pvt. Ltd. in denying financial benefits on accounts of her promotion to the post of Assistant manager w.e.f. 01.07.2007, Dy. Manager w.e.f. 01.07.2012 and Manager w.e.f. 01.07.2016 is proper,legal and justified?

iii) If not, what relief she is entitled to and from which due date and what other directions are necessary in this regard?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Claim statement filed, rebuttal written statement filed on behalf of the management no. 2.

3. The claimant filed an application for withdraw with affidavit. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बर्ड वर्ल्ड वाइड फ़्लाइट सर्विसेज (इंडिया) प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह–श्रम न्यायालय** नं. 1, नई दिल्ली के पंचाट (आई डी नम्बर 91/2021) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/06/2024** को प्राप्त हुआ था।

[सं. एल-11012/10/2021-आई. आर. (सी एम-I)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 91/2021***)* of the **Central Government Industrial Tribunal-cum-Labour Court N0.1, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Bird World Wide Flight Services (India) Pvt.Ltd.** and their workmen, received by the Central Government on 13/06/2024

[No. L-11012/10/2021 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

Before the Justice Vikas Kumar Srivastava (Retd.) Presiding Officer, Government of India Ministry of Labour & Employment, Central Government Industrial Tribunal Cum – Labour Court-I, New Delhi

ID No. 91/2021

Sh. Anil Kumar Shakya,
Through BWFS Airport Karamchari Union (Regd.),
W4, Opp. Kalkaji Bus Depot, Govind Puri,
New Delhi-110019.

Workman…

Versus

M/s Bird WorldWide Flight Services Pvt. Ltd.
E-9, Connaught Circus,

Connaught Place,
New Delhi-110001.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-11012/10/2021-IR(CM-I)) dated 02.07.2021 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the services of the workman Sh. Anil Kumar Shakya has been terminated illegally and unjustifiably by the Management of Bird World Wide Flight Services (India) Pvt Ltd., and if so to what relief the said workman is entitled to and what directions are necessary in this regard?"*

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 13 जून, 2024

का. आ. 1199.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय** नं. 1, नई दिल्ली के पंचाट (आई डी नम्बर **106/2022**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/06/2024** को प्राप्त हुआ था।22

[सं. एल-22011/03/2022-आई. आर. (सी एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award ***(ID No. 106/2022)*** of the **Central Government Industrial Tribunal-cum-Labour Court N0.1, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on ***12/06/2024.***

[No. L-22011/03/2022 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

Government of India Ministry of Labour & Employment, Central Government Industrial Tribunal Cum – Labour Court-I, New Delhi

ID No. 106/2022

The General Secreatary,
FCI Employees Association (CITU),
B T Ranadive Bhawan, 13-A Rouse Avenue,
New Delhi-110002.

Workman…

Versus

The Executive Director,

FCI Zonal Office (North),
A2A-A2B, Tulsi Marg, Sector-24,
Noida (UP)-201301.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-22011/03/2022-IR(CM-II)) dated 16.03.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the raised by Food Corporation of India Employees Association (CITU) in his letter dated 07/04/2021 in respect of transfer of Shri Omvir Singh to J&K Region by the management of FCI Zonal Office (North), Noida (UP) is legal, proper and justified? If yes, to what relief the workman is entitled to?"*

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 19.04.2024

नई दिल्ली, 13 जून, 2024

का.आ. 1200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जाट रेजिमेंटल सेंटर के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय** नं. II, नई दिल्ली के पंचाट (आई डी नम्बर **39/2023**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/06/2024** को प्राप्त हुआ था।

[सं. एल-20013/01/2024-**आई. आर. (सी एम-I)**]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 39/2023*)*** of the **Central Government Industrial Tribunal-cum-Labour Court N0.II, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Jat Regimental Center** and their workmen, received by the Central Government on ***12/06/2024***

[No. L-20013/01/2024 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

ID.NO. 39/2023

Ms. Yasmeen, W/o Late Sh. Kasim Ali,
R/o Bareilly, Bareilly, Uttar Pradesh-243004 ….. Claimant / workman

Versus

Jat Regimental Centre,
Bareilly, Uttar Pradesh-243001. …… Management

AWARD

Deputy CLC, Dehradun had sent the reference to this tribunal for adjudication with the following words.

> *"Whether the termination of the service of Ms. Yasmeen W/o Late Kasim Ali, Bareilly who was engaged in JAAT Regimental Centre, Bareilly is proper and justified. If so, to what relief, the workman is entitled to by way of compensation, if any?*

After receiving the said reference, notice was issued to both the party i.e, M/s **Yasmeen** and **Jaat Regiment**. One **Hawaldar** from the Jaat Regiment has been appearing on the date, however, the claimant have not come forward to file his claim before this tribunal, despite, providing a number of opportunity.

In these circumstances, this tribunal has no option except to pass the no disputant award. Hence, no disputant award is passed accordingly. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act 1947.

16th Nov./2023

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 13 जून, 2024

का.आ. 1201.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जय प्रकाश नारायण एपेक्स ट्रॉमा सेंटर (एम्स)के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय** नं. II, नई दिल्ली के पंचाट (आई डी नम्बर 65/2022) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/06/2024** को प्राप्त हुआ था।

[सं. एल-20013/01/2024-आई. आर. (सी एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 65/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court N0.II, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Jai Prakash Narayan Apex Trauma Center (AIIMS)** and their workmen, received by the Central Government on ***12/06/2024***

[No. L-20013/01/2024 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D**. No. 65/2022**

Sh. Ravi Kuma Mahalwal, S/o Sh. Satveer Singh Mahalwal,
Through- Rashtriya Rajdhani Sharamik Sangh,
1576/13, Govind Puri Kalka Ji, New Delhi- 110019. ...

Claimant/Workman

Versus

1. **Jai Prakash Narayan Apex Trauma Centre (AIIMS),**
   Ansari Nagar, Ring Road, New Delhi- 110029.

2. **Bombay Intelligence Security India Ltd.,**
   B- 295, C.R. Park, Nehru Place, New Delhi-110019.

3. **Bombay Intelligence Services India Ltd.,**
   Head Office : Omega House Hiranandani Gardens, Powai,
   Mumbai Maharashtra – 400076. … Managements/Respondents

AWARD

The appropriate government had sent the reference to this tribunal for adjudication with the following words.

> *"Whether action of the management of Bombay Intelligence Security India Ltd., a contractor under Jai Prakash Narayan Apex Trauma Centre (AIIMS), New Delhi in terminating the services of Sh. Ravikumar Mahalwal S/o Sh. Satveer Singh Mahalwal w.e.f. 03.02.2018, as raised by Rashtriya Rajdhani Shramik Sangh, New Delhi vide letter dated 17.08.2018 is proper legal and unjustified? If not, to what relief the disputant worker is entitled and what other directions are necessary in this respect?"*

After receiving the said reference, notices were issued to both the parties. Both the management and the claimant have not been appearing on the date, however, the claimant have not come forward to file his claim statement before this tribunal, despite, providing a number of opportunity.

In these circumstances, this tribunal has no option except to pass the no disputant award. Hence, no disputant award is passed. Award is passed accordingly File is consigned to the record room. A copy of this award is hereby sent to the appropriate government for notification under section 17 of the I.D Act 1947.

. ATUL KUMAR GARG, Presiding Officer.

Date: Date: 4th January, 2024

नई दिल्ली, 13 जून, 2024

का. आ. 1202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नागरिक उड्डयन महानिदेशक एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय नं.** II, नई दिल्ली के पंचाट (आई डी नम्बर 80/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/06/2024** को प्राप्त हुआ था।

[सं. एल-20013/01/2024-आई. आर. (सी एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 80/2016*)*** of the **Central Government Industrial Tribunal-cum-Labour Court N0.II, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Director General of Civil Aviation & ors.** and their workmen, received by the Central Government on ***12/06/2024***

[No. L-20013/01/2024 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

ID.NO. 80/2016
Mrs. Soma Sinha
W/o Sh. Abhishek Sinha,
R/o. 606, Govind Puri Extn.,
New Delhi. …..Claimant / workman

Versus

1. **Director General of Civil Aviation.**
   Ministry of Civil Aviation,
   Government of India,
   Aurbindo Marg, Opposite Rajiv Gandhi Bhawan,
   PS Lodhi Colony,
   NewDelhi-220004.
2. **Collaborate Solution Pvt. Ltd.**
   Through Mr. Mallik Miryala,

Director Operation,

Office at: 3-3-68/60,

Suit No. 302, Prashanti Arcade,

Ramnathpur, Hyderabad-600024.

3. **Mohan K.**

Head-Talent Acquisition

Collaborate Solution Pvt. Ltd.

Office at: 3-3-68/60,

Suit No. 302, Prashanti Arcade,\

Ramnathpur, Hyderabad-600024.

4. **Mr. Kandula Tirmula Prasad,**

Hewlett-Packard India Sales Pvt. Ltd.,

3rd Floor, No. 35,

Salarpuri Arena,

Hosur main Road,

Adugodi,

Bangalore-660040.

5. **Mr. Sankar Krishana**

Hewlett-Packard India Sales Pvt. Litd.,

3rd Floor, No. 35,

Salarpuri Arena,

Hosur Main Road,

Adugodi,

Bangalore-660040.

6. **Mr. Kishore Yellavajhala VSSS,**

Hewlett-Packard India Sales Pvt. Ltd.,

DLF Cyber Green,

3rd Floor, Tower-D,

DLF Cyber City-III,

Gurgaon-233033 …… …Managements

AWARD

The workmen has filed the present application under section 2-A of the I.D.Act, 1947. After receiving the said application, notices have been issued to both the party Ms. **Soma Singh** for the claimant and the managements of **Director General of Civil Aviation & Ors.** for appearance. The applicant made prayer that her termination from the service by the management which be declare illegal and unjustified and she be reinstated with full back wages. It is the case of the applicant/workman that she got the contract of employment through E-mailed. After an interview with a salary of Rs. 6,60,000/- (Rupees Six Lac and Sixty Thousands Only) per annum with other perks and she was placed in Delhi at the project of DGCA, Govt. of India (OP No. 1). She had joined on 09.02.2016 and resumed her work allocated and accomplished her task dutifully and successfully and as per the expectation of the management no.- 2 to 6. In due course of time, the workman was tortured by the management. Managements used to call the workman at Gurgaon Office, other restaurants in Delhi and Gurgaon on the pretext of discussing official works but whenever workman workman reached there they just used to gossip and cajole the workman for sexual and physical favours. The workman refused to agree for the sexual and physical favour to management no.-4 to 6 and thereby she was terminated without any just and reasonable cause. She filed an FIR bearing no. 252 of 2015 at Lodhi Colony, police station, New Delhi wherein the charge sheet had been submitted and the opposite party no. 6 has also been charged by the court and further trial is pending in the court. Hence, she had filed the present claim petition.

Record Perused. The matter is listed for final argument. However, on scrutinized the record no evidence has been laid by the parties i.e. management and workman. In absence of any evidence adduced by the workman, the claim is failed. Issues have been framed in this case. Despite providing a number of opportunities, claimant has not appeared to substantiate his claim.

Hence, In these circumstances this tribunal has no option except to dismiss the claim of the claimants. Claim of the claimant stand dismissed accordingly. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act 1947. File is consigned to record room.

ATUL KUMAR GARG, Presiding Officer.

Date 08th November, 2023

नई दिल्ली, 13 जून, 2024

का. आ. 1203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सफदरजंग अस्पताल (स्पोर्ट इंजरी सेंटर) के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह– श्रम न्यायालय नं. II**, नई दिल्ली के पंचाट (आई डी नम्बर **73,74,76,82,84,89,& 91 of 2019)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/06/2024** को प्राप्त हुआ था।

[सं. एल-20013/01/2024-आई. आर. (सी एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1203—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 73,74,76,82,84,89,& 91 of 2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court N0.II, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Safdarjung Hospital(Sport Injury Center)** and their workmen, received by the Central Government on ***12/06/2024.***

[No. L-20013/01/2024 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 73/2019

Sh. Ranjay Kumar Singh, S/o Sh. Kishori Singh,

Address:- B-80, Aali Vihar, Sarita Vihar,

South Delhi-110076.

I.D. No. 74/2019

Sh. Raushan Kumar, S/o Sh. Ashok Kumar,

Address:- Kh. No.34/16, Golden Enclave,

Delhi-110043.

I.D. No. 76/2019

Sh. Ranjeet Kumar, S/o Sh. Inder Bhushan,

Address:- B-36, B-Block, Harkesh Nagar, Okhla Tank,

New Delhi-110020.

I.D. No. 82/2019

Sh. Rohit Pal, S/o Sh. Biram Pal,

Address:- B-179, Sector-20, Nodia, U.P.

I.D. No. 84/2019

Sh. Subodh Kumar, S/o Sh. Udeshwar Ray,

Correspondence Address:- 1-932, Gali No-3, Hari Nagar Extn.

Jaitpur, Badarpur, Delhi-110044.

Permanent Address:- 49, Ward No. 10, Malpur, Agrail,

Muzzaffarpur, Bihar-843104.

I.D. No. 89/2019

Sh. Nikhil Kanojia, S/o Sh. Ramesh Kanojia,

Address:- Qrtr. No.-1, Pandit Uma Shankar Dixit Marg,

Chanakyapuri, New Delhi.

.D. No. 91/2019

Sh. Keshav Kumar, S/o Sh. Ram Prasad,

Address:- T-5089, T-Hurts Near Police Compound,

Teen Murti Chanakya, New Delhi-110044.

Versus

1. **Safdarjung Hospital (Sports Injury Center),**

   Mahatma Gandhi Marg, Safdarjung Campus, New Delhi-110029.

2. **The Director, Bhayana Builders Pvt. Ltd.**

   At-7, Factory Road, Near Safdarjung Enclave,

   New Delhi-110029.

AWARD

By this composite order, I shall dispose of these seven applications of **U/S 2A of the Industrial Disputes Act** (here in after referred as an Act) filed by the different claimants against the same respondents. Having the common respondents and same cause of action, these cases are taken together for their illegal termination. Name and particular of their employment are given under -

List of Workmen

Sl. No.	Name	Father's Name	Post	Dates of Joining	Dates of Termination
1	Ranjay Kumar Singh	Sh. Kishori Singh	Fitter	2009	17.08.2018
2	Raushan Kumar	Sh. Ashok Kumar	Fitter	2009	17.08.2018
3	Ranjeet Kumar	Sh. Inder Bhushan	Helper	2009	17.08.2018
4	Rohit Pal	Sh. Biram Pal	Electrician	2009	17.08.2018
5	Subodh Kumar	Sh. Udeshwar Ray	Pump Operator	2009	17.08.2018
6	Nikhil Kanojia	Sh. Ramesh Kanojia	Helpdesk Executive	2009	17.08.2018
7.	Keshav Kumar	Sh. Ram Prasad	Assistant	2009	17.08.2018

Claims of the workmen are that they have been serving with the management-1 through management-2. They were appointed at their post for the site in **SIC Safdarjung**, New Delhi (Sports Injury Centre, Safdarjung Hospital Complex, New Delhi) by **M/s Bhayana Builders Pvt. Ltd.** However, this company has changed various names i.e. (i) **M/s Bhawana Builders Pvt. Ltd**. (ii) **M/s Roto Power Projects Pvt. Ltd.** (iii) **M/s AWC Facilities Management India Pvt. Ltd.** and (iv) **M/s Wilburg Facilities Management Services Pvt. Ltd.** from time to time. Whenever the name of the company was changed, the fresh appointment letter and other documents were issued to the claimants. The management had deducted 37% amount from the salary of the workmen and other co-workers. In this regard, when the workmen raising this question regarding such illegal deductions, on this, it was threatened to the workmen by the management and other senior officials that if anyone objected, then they will be expelled/terminated from their jobs without issuing any notice. On November 2016, after the demonetization, the management had pressurized the workmen and other co-workers to deposit the old currency money in the bank accounts (approx. Rs. 50,000/- to Rs. 1,25,000/-) by giving threats that if the same is not done by them, then they will be expelled/terminated from their job. The management has also promised to give/issue the PF, Bonus, Leave amount, and all other salary benefits, but never issued the same to the workmen. Since 17.08.2018, the workmen had not been

allowed by the management to do the work and on the same date, the management had brought the new staff and expelled out/terminated and not allowed to work since then to the workmen and other co-worker etc. Workers including the workmen have filed an application U/s 2A of the I.D Act 2010 in the office of ALC (C), New Delhi, against the management **Bhayana Builders Pvt. Ltd.** (Contractor)/Safdarjung Hospital (Principle Employer). They had sent the complaint to the Assistant Labour Commissioner, but, it has yielded no result. Hence, they have filed the present claims.

Respondent-1, has been proceeded ex-parte vide order dated 12.10.2023. WS has been filed by the M-2 and he denied the averment made in the claim. He submitted that claims are liable to be dismissed.

Today, Workman AR submits that he has no contact with the claimants since long.

In these circumstances, when the claimants have not been appearing since long, it appears that they are not interested to pursue their cases. Hence, their claims have been resulted into no disputant award. No disputant awards are accordingly passed. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. Files are consigned to record room.

ATUL KUMAR GARG, Presiding Officer

28th May, 2024

नई दिल्ली, 13 जून, 2024

का. आ. 1204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया हाउस के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह –श्रम न्यायालय नं.** II, नई दिल्ली के पंचाट (आई डी नम्बर 52&53/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/06/2024** को प्राप्त हुआ था।

[सं. एल-20013/01/2024-आई. आर. (सी एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th June, 2024

S.O. 1204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 52&53/2020*)*** of the **Central Government Industrial Tribunal-cum-Labour Court N0.II, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Air India House** and their workmen, received by the Central Government on ***12/06/2024.***

[No. L-20013/01/2024 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 52/2020

Sh. Birender Singh, S/o Sh. Sardar Singh,

R/o- Village-Kalana, Tehsil- Gannaur,

District-Sonepat, Haryana.

I.D. No. 53/2020

Sh. Kailash Verma, S/o Sh. Laxmi Narain,

R/o- G-6, Gali No.-6, Wazirabad Village,

Delhi-110084.

VERSUS

1. **Air India House,**
   113, Gurudwara Rakabganj Road,
   New Delhi-110001.
2. The Director, Sh. Satbir Singh,

Lifeline Travels,

211-212, Shivam Plaza, Sector-6,

Dwarka, New Delhi-110075.

AWARD

These are the two cases filed by the different workmen against the same management. Having common respondents and same cause of action, these cases are taken together for disposal of these cases. Claims of the claimants are that they were appointed by the management on 01.05.2014 as well as 15.03.2015 at the post of driver at their last drawn salary of Rs. 11,500/- respectively. Their services were placed at airport by the management-2 as it was having the contract with management-1. They have honestly worked with the management and no complaint of any kind were made of them. Though, they have completed 240 days in a year, their services were terminated by the management on 02.11.2016 illegally. They had moved the applications before the conciliation officer, but, yielded no result. As such they had filed the claim before this tribunal.

Management-1 had filed the W.S and it had denied the relationship of an employer and employee. It has been the case of the management that it has engaged the contractor M/s Lifeline travels who was awarded the contract for providing transport services of Brand new diesel cars for Air India cabin crue officials at Delhi vide aggrement dated 28.07.2014 for a period of two years. Contract was further extendable for one year. He submitted that claim of the respondent-1 be dismissed, quo respondent-1.

Management-2 had not appeared and he was proceeded ex-parte vide order dated 24.08.2022.

Thereafter, the workmen had stopped coming in the court. Respondent-1 have been regularly appearing through his counsel.

In this circumstances, when the claimants are not interested in persuing their claims, then it was resulted into no disputant award. No disputant award are passed accordingly in these cases. Files are consigned to record room.

Award is accordingly passed. A copy of this award is sent to appropriate government for notification under section 17 of the I.D. Act. File is consigned to record room.

ATUL KUMAR GARG, Presiding Officer

3rd April, 2024

नई दिल्ली, 14 जून, 2024

का. आ. 1205.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ़ बड़ौदा के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में औघोगिक अधिकरण/श्रम न्यायालय, **अहमदनगर** के पंचाट (26/2010) प्रकाशित करती है।

[सं. एल-39025/01/2024 –**आई. आर.** (बी-II)-08]

सलोनी, उप निदेशक

New Delhi, the 14th June, 2024

S.O. 1205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.26/2010*)* of the *Indus.Tribunal-cum-Labour Court Ahmednagar* as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L-39025/01/2024 – IR (B-II)-08]

SALONI, Dy. Director

दाखल दि : 24.11.2009

नोंदणी दि : 24.11.2009

निकाल दि : 09.01.2024

कालावधी : 14 वर्ष, 01 महिने, 15 दिवस

श्री.शरद जी. देशपांडे, पिठासीन अधिकारी तथा न्यायाधीश, प्रथम कामगार न्यायालय, अहमदनगर यांचेसमोर

नि.ओ–7

रेफरंन्स (आयडीए) क. 26/2010

(सीएनआर क.एमएचएलसी 160005202009)

असिस्टंट जनरल मॅनेजर,

बॅंक ऑफ बडोदा, 11/ 1 खिलारे पथ,

येरंडवणे, पुणे. ... प्रथम पक्ष.

विरुध्द

1. विजय सखाराम रणदिवे (मयत)

रा. मिलींद सोसायटी, ठमीपदक छमू ळंदमंउदमत छांए

ता. श्रीरामपूर, जि. अहमदनगर 413709

1 अ. श्रीमती वैशाली विजय रणदिवे (अ.क. 1अ ते 1 ड हे सर्व वारसदार)

वय– 52 वर्षे, धंदा– घरकाम

1ब. वैभव विजय रणदिवे,

वय– 34 वर्षे, धंदा–व्यवसाय

1क. विवेक विजय रणदिवे

वय– 32 वर्षे, धंदा–व्यवसाय

1ड. गौरी विजय रणदिवे,

वय– 29 वर्षे, धंदा–व्यवसाय

सर्व रा. फ्लॅट नं. 204,

अतुल को–ऑपरेटिव्ह हौसींग सोसायटी,

बिल्डींग नं. ओबी 4/7, अजमेरा,

पिंपरी, पुणे 411018 ... व्दितीय पक्ष.

कोरम : शरद जी.देशपांडे, पिठासीन अधिकारी तथा न्यायाधीश.

वकील : प्रथम पक्षातर्फे श्री. ए.व्ही.पाटील वकील.

द्वितीय पक्षातर्फे श्री.डी.व्ही.चंगेडे वकील.

निवाडा/अवार्ड

(दि. 09 जानेवारी 2024)

1. दिवस होता शनिवार दि. 19.8.2006 नेहमीप्रमाणे बॅंक ऑफ बडोदा संगमनेर शाखेत गर्दी जमली होती. प्रत्येक जण आपआपले बॅंकेचे काम उरकून त्याच्या ठरलेल्या कामासाठी निघून जाण्याचे प्रयत्न करीत होता. नेहमीप्रमाणे व्दितीय पक्षकार विजय रणदिवे बॅंकेत 10.30 वाजता डयुटीवर हजर झाले व मुख्य रोखपाल या नात्याने त्याच्या खुर्चीत जावून बसले. दिवसभराचे काम उरकून रोजच्याप्रमाणे त्यानी नोटांची मोजणी केली व त्यानी रु. 1000/–, रु.500/– व रु. 100/– अशी नोटांची व्यवस्थीत वर्गवारी करुन रक्कम 78,93,796 रुपये 57 पैसे जमा असल्याची खात्री केली. आपल्या सहकार्या श्रीमती लबड यांचेसोबत जॉईन्ट रजिस्टर व डॉकेट शिटवर सहया करुन एक चावी श्रीमती लबडे यांचेकडे व एक चावी स्वत:कडे ठेवली. सर्व रक्कम त्यांनी तिजोरीत ठेवली व व्यवस्थीत लॉकर बंद झाल्याची खात्री केली. खरे

तर हा त्याच्या नित्याच्या कामाचा भाग होता.

2. साधारण दुस–या दिवशी बॅंकेला सुट्टी होती. दि. 21.8.2006 रोजी सोमवारी रोजच्याप्रमाणे ते बॅंकेत कामावर हजर झाले. बॅंकेचे मॅनेजर, ऑफिसर, लिपिक, शिपाई हे पण कामावर हजर झाले. सौ. लबडे यांनी आपल्याकडील चावीने स्ट्रॉंग रुमचे शटर व ग्रील कॅश शिपाई विठ्ठल चव्हाण यांचे मदतीन उघडले. त्यानंतर श्रीमती लबडे व व्दितीय पक्षकार यांनी त्यांच्याकडील चावीने लॉकर उघडले. कामगाराने रोजच्याप्रमाणे त्यांचे दैनंदिन व्यवहार सुरु केले तिजोरी उघडल्यानंतर तिजोरीत असलेली कॅश व स्टॅम्प शिपाईकडे दिली. कॅशपैकी सुट्टया नोटा व सुट्टे पैसे असलेला ट्रे व नोटांचे बंडल कॅश केबीनमध्ये व्यवहारासाठी आणून ठेवले. त्यावेळेस ट्रेमध्ये नोटा रु. 4,16,796/–रुपये 57 पैसे असे होते.

3. त्यादिवशी व्यवहाराची संख्या जास्त असल्याने दररोज अंदाजे 30 लाखांपर्यंतची रोख रक्कम खातेदार जमा करीत असत. खरे तर शाखेमध्ये 7 लाखापर्यंत राज रक्कम ठेवण्याचे बंधन होते व उरलेली रक्कम स्टेट बॅंकेमध्ये जमा करावी लागते. परंतु, स्टेट बॅंक देखील जमा रक्कम स्वीकारण्याचे बंधन ठेवत होती. त्यामुळे सर्व बॅंकामध्ये अशी पध्दत होती की, ज्या बॅंकेला कॅशची गरज असेल तर ती रोख स्वरुपात देवून त्याऐवजी डिमांड ड्राफ्ट स्वीकारीत असे. त्यादिवशी संगमनेर शाखेला 50 लाख रुपयांची गरज असल्याने कॅशिअर श्री. बिडवे व शिपाई श्री. भेंडाळे हे डिमांड ड्राफ्ट बॅंकेत घेवून आले व प्रथेप्रमाणे एकच्या सुमारास मॅनेजर साहेबांनी व्हॉऊचर पेमेंन्टसाठी कामगाराकडे पाठविले व स्ट्रॉंग रुममधून 50 लाख रुपये रक्कम जॉईन्ट रजिस्टरवर नोंद करुन काढण्यात आली.

4. साधारणपणे 6 च्या सुमारास एक ग्राहक जमनालाल कोठारी यांना भेटून येण्यासाठी मॅनेजर व दोघे गेले, विठ्ठल चव्हाण कॅश प्युन असूनही मॅनेजर पाचोरकर त्यास कॅश रिसीव्हर म्हणून काम नेमून देत होते. खरे तर एवढी मोठी कॅश इतर लोकांच्या भरवशावर बॅंक सोडून जाणे जोखमीचे होते परंतु, मनात नसतानाही मॅनेजर साहेबांना मी येत नाही असे म्हणता आले नाही. संध्याकाळी जेव्हा स्ट्रॉंग रुममध्ये रक्कम ठेवण्याचे काम सुरु झाले तेव्हा अचानक पाच लाख रुपये कमी असल्याचे निष्पन्न झाले. वास्तविक ही बाब गंभीर होती. व्दितीय पक्षकार कामगाराने श्री. पाचोरकर यांना स्ट्रॉंग रुममध्ये बोलाविले त्या अनुषंगाने दैनंदिन व्यवहार लिहिताना काही चूक झाली आहे याची तपासणी करण्यात आली. बॅंकेतील कॅश प्रत्यक्ष मोजली व त्या मोजणीमध्ये पाच लाख रुपये कमी असल्याचे निष्पन्न झाले. त्या दिवशी जे मोठे पेमेंन्ट केले होते त्यात रु.100/– रुपयांचे काही बंडल जास्त गेले असावेत त्या अनुषंगाने चौकशी करण्यात आली. परंतु, ए.डी.सी.सी. बॅंकेच्या अधिका–यांनी असे जास्तीची रक्कम आली नसल्याचे सांगितले. साहजिकच दुस–या दिवशी दि.22.8.2006 रोजी पाच लाख रुपयांचे व्हॉऊचर सस्पेंस अकौंन्ट तयार करण्यात आले व याची माहिती फोनवरुन विभागीय कार्यालयाला देण्यात आली. तसेच, बॅंक कर्मचारी यांनी पोलिस स्टेशला फिर्याद दाखल केली व प्रस्तुत व्दितीय पक्षकारास दि. 23.8.2006 रोजी तात्काळ निलंबित करण्यात आले. दि. 25.8.2006 रोजी विभागीय कार्यालयाच्या सांगण्यानुसार मॅनेजर श्री. पाचोरकर यांनी सदर व्दितीय पक्षकार कामगारास पाच लाख रुपयांचा त्वरीत भरण्याचे पत्र दिले परंतु सदर रक्कम भरण्यास त्याने असमर्थता दर्शविली.

5. थोडक्यात बॅंकेचे पाच लाख रुपये गहाळ झाल्याचे हे प्रकरण आहे. साहजिकच व्दितीय पक्षकार विजय रणदिवे याची पुढे चौकशी करण्यात आली. त्याचे मते, झालेली चौकशी ही नैसर्गिक न्यायतत्वाविरुध्द करण्यात आली. त्याला कुठल्याही प्रकारची संधी देण्यात आली नाही. चौकशीत त्याला त्याची बाजू मांडता आली नाही. वास्तविक, सदर घटनेच्या वेळी शिपाई चव्हाण तेथे हजर होता. दि. 19.9.2006 रोजी जनरल मॅनेजर बॅंक ऑफ बडोदा यांनी त्याचा खुलासा मागितला ज्याला त्याने उत्तर दिले. दि. 8.12.2006 रोजी व्दितीय पक्षकारास आरोपपत्र देण्यात आले व त्याची विभागीय चौकशी करण्यात आली. वास्तविक, त्याला आरोपपत्र वाचून दाखविण्यात आल नाही. त्याला पुराव्याची संधी देण्यात आली नाही. ज्यांनी आरोपपत्र दिले त्यांनी त्याची चौकशी केली. नैसर्गिक न्यायतत्वाचे पूर्ण पायमल्ली करण्यात आली त्यामुळे झालेली चौकशी ही चौकशी नसून फक्त चौकशीचा निव्वळ देखावा करण्यात आला. व्दितीय पक्षकारावर कर्तव्यात कसूर केल्याबाबत प्रामाणिकपणे काम न करणे व बॅंकेच्या नियमांचे पायमल्ली करणे असे आरोप ठेवण्यात आले.

6. उलटपक्षी बॅंकेने सदरची चौकशी नैसर्गिक न्यायतत्वाला धरुन केल्याचे म्हटले आहे. त्याला बचावाची संधी देण्यात आली. उलटतपास घेण्यात आला. चार्ज वाचून दाखविण्यात आला. त्याने रोखपाल

मुख्य पदावर जबाबदारीने काम करणे अपेक्षित होते. पाच लाख रुपयांची कॅश कमी असणे ही बाब गंभीर स्वरुपाची असून दुर्लक्ष करण्याजोगी नाही. झालेल्या चौकशीमध्ये त्याचेविरुध्द केलेले आरोप सिध्द झाले व त्याला चौकशी अंती काढून टाकण्यात आले.

7. प्रकरणातील व्दितीय पक्षकाराचे कथने व प्रथम पक्षकाराने दाखल केलेली कैफियत पाहता माझ्या पूर्वाधिकारी यांनी नि. ओ– 1 वर खालील मुद्दे काढले असून त्याचे मराठीत भाषांतर व माझे निष्कर्ष कारणमिमांसेसह खालीलप्रमाणे देत आहे–

मुद्द	निष्कर्ष
1. व्दितीय पक्षकाराने बॅंक ऑफ बडोदा व्यवस्थापनाने त्याला दि. 30.11.2007 रोजी नोकरीतून बेकायदेशीरपणे कमी केले व औद्योगिक विवाद कायदयाचे कायदेशीर प्रावधनाचे उल्लंघन करुन नैसर्गिक न्यायतत्वाचे उल्लंघन केले असल्याचे व्दितीय पक्षकाराने सिध्द केले आहे काय?	... नकारार्थी.
2. व्दितीय पक्षकार हा नोकरीत पुर्नस्थापना करुन मागील पूर्ण वेतन मिळण्यास पात्र आहे काय?	... नकारार्थी.
3. निवाडा कोणता ?	... अंतिम आदेशाप्रमाणे.

:कारणमिमांसा:

मुद्दा क. 1 च्या संदर्भात :

8. माझ्या पूर्वाधिकारी यांनी प्राथमिक चौकशीच्या अनुषंगाने दोन प्रमुख मुद्दे उपस्थित केले असून सविस्तर विवेचन केले आहे व झालेली चौकशी ही नैसर्गिक न्यायतत्वाला धरुन सुसंगत, वाजवी झाली असल्याचे निष्कर्ष काढून व्दितीय पक्षकाराची केलेली बडतर्फी ही योग्य व कायदेशीर असल्याचे म्हटले आहे.

9. साहजिकच दि. 14.6.2017 रोजी न्यायालयाने चौकशी योग्य व वाजवी असल्याचे ठरविल्यानंतर या न्यायालयास परत चौकशीच्या कार्यपध्दतीबाबत कुठलेही निष्कर्ष काढता येणार नाही. सदरील संदर्भिय याचिका ही बॅंक ऑफ बडोदाच्या व्यवस्थापनाने नोकरीतून बडतर्फ करण्याचा जो निर्णय घेतला आहे व त्यासाठी केलेली चौकशी व त्याला दिलेली शिक्षा योग्य आहे काय? या अनुषंगाने आहे. त्यामुळे चौकशीनंतर न्यायालयासमोर कुठला पुरावा आला आहे काय? हे पाहणे गरजेचे आहे.

10. परंतु, दुर्देवाने एक बाब नम्द करावीशी वाटते की, दरम्यानच्या काळात व्दितीय पक्षकार विजय रणदिवे दि. 2.5.2021 रोजी मयत झाला व नि. ओ– 6 वरील आदेशानुसार त्याच्या वारसांना रेकॉर्डवर घेण्यात आले व नि. यु– 50 वर त्याची पत्नी वैशाली रणदिवे यांनी पुरावा दिला असून असे प्रतिपादन केले की तिचे पती बॅंक ऑफ बडोदा बॅंकेत कार्यरत होते व त्यांनी नोकरीमध्ये कुठलेही गैरवर्तन केले नाही. परंतु, त्यांना या प्रकरणात विनाकारण गुंतविण्यात आले व त्यांना नोकरीतून बडतर्फ करण्यात आले. पती निधनानंतर तिने ही नोकरी मिळविण्याचा प्रयत्न केला परंतु तिला नोकरी मिळाली नाही व जे काही आर्थीक लाभ तिच्या पतीस मिळणार होते ते त्यांच्या वारसांना मिळावेत अशा आशयाचे शपथपत्र दिले आहे.

11. प्रथम पक्ष बॅंकेचे वकील श्री. अशोक पाटील यांनी तिचा उलटतपास घेतला व कॅश गेल्यामुळे तिच्या पतीवर केस दाखल झाली होती. ती रक्कम अंदाजे पाच लाख रुपये होते मात्र तिच्या पतीवर केलेली कारवाई मात्र योग्य व बरोबर होती ही बाब तिने स्पष्टपणे नाकारली आहे.

12. व्दितीय पक्षकाराचे वकील श्री. चंगेडे यांनी औद्योगिक विवाद कायदयाचे कलम 11ए चा दाखला दिला. संदर्भासह तो मी खाली देत आहे–

11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in in case of discharge or dismissal of workmen.-- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

13. त्यामुळे सदरचे प्रकरण हे उपेंचचतवचतपंजपवद नसून जास्तीत जास्त अज्ञात व्यक्तीने केलेली चोरी म्हणता येईल. किंबहुणा, निष्काळजीपणा म्हणता येईल त्यामुळे एवढया लहान चुकीस बडतर्फीची शिक्षा देणे योग्य नसल्याचे जोरकसपणे प्रतिपादन केले व प्रथम पक्षाने मयत व्दितीय पक्षकाराविरुध्द उपेंचचतवचतपंजपवद चे प्रकरण संशयापलीकडे जावून सिध्द केलेले नसल्याने त्याला सदरची शिक्षा बदलून नोकरीत पुर्नःस्थापना द्यावी. परंतु, दुर्देवाने व्दितीय पक्षकाराचा मृत्यू झाला असल्याकारणाने पुर्नस्थापना देणे जरी शक्य नसले तरी त्याला पुर्नस्थापना दिल्याच गृहीत धरुन मधील काळातील संपूर्ण वेतन द्यावे असे प्रतिपादन केले. उलटपक्षी, प्रथम पक्ष बॅकेचे वकील श्री. अशोक पाटील यांनी सदरचे प्रकरण हे गंभीर स्वरुपाचे असून निपक्षपणे चौकशी झाली व चौकशीत मयत व्दितीय पक्षकारास दोषी ठरविण्यात आले. झालेली चौकशी नैसर्गिक न्यायतत्वाला धरुन वाजवी, व सुसंगत झाली असल्याचे यापूर्वी ठरले असल्याने अशाप्रकारच्या पाच लाख रुपयांच्या अफरातफरीच्या गंभीर प्रकरणात दयाळूपणा दाखविणे योग्य होणार नाही. वास्तविक, ग्राहकाने बॅकेकडे अतिशय विश्वासाने पैसा ठेवलेला असतो व तो हाताळणा–या व्यक्तीनेच अशाप्रकारचा अपहार करणे हे नैतिक व कायदेशीर नसल्याचे प्रतिपादन केले.

14. प्रथम पक्षाचे वकील श्री. पाटील यांनी खालील न्यायनिवाडयांचा आधार घेतला.

1. **Chief Executive Officer, Zilla Parishad, Jalgaon Vs. Maharu Kautik Patil (deceased through L.Rs.) & Ors. (2015 LLR 1236)** wherein it is held that-

" *Granting relief to a delinquent employee found guilty of misappropriation of public fund would be a misplaced sympathy and hence not justified. When charges of misappropriation of public money stands proved in fair and proper domestic enquiry, the punishment of dismissal from service is not shockingly disproportionate to the gravity of misconduct, calling interference by the Court."*

2. **Shivaji Daulat Dadar Vs. Divisional Controller, Maharashtra State Road Transport Corporation** wherein it is held that-

" *Once the charge of misappropriation of money of the employer is proved against the delinquent, the employer as well as Court are not to consider the clean past record of the delinquent employee since it cannot mitigate the seriousness and gravity of such a charge. Misappropriation of a small or a big amount is insignificant in respect of imposition of punishment upon the delinquent employee."*

3. **U.P.S.R.T.C. Vs. Pradeep Kumar (2016 LLR 897)** wherein it is held that- " *Misconduct of misappropriation should be dealt with iron hands and not leniently. Mere state that punishment is disproportionate without substantial reasons would not suffice to substitute a lighter punishment. An employee holding a position of trust where honesty and integrity are inbuilt requirements of functioning, dealing the matter leniently would not be proper. Highest degree of integrity and trustworthiness is must while dealing with the public money."*

4. **Maharashtra State Road Transport Corporation, through its Divisional Controller, Jalgaon Vs. Baburao Raoji Shinde (deceased) through L.Rs. (2017 LLR, 399)** wherein it is held that-

"Labour Court cannot cause an interference in the quantum of punishment even if punishment may appear to be disproportionate until it is shockingly disproportionate to the conscience of the court since quantum of amount misappropriated is of no significance. Once an act of misappropriation is proved, the only punishment available is of dismissal from service."

5. **State Bank of India and others Vs. Atindra Nath Bhattacharyya and another (2020 (164) FLR 77)** wherein it is held that- *The allegations of financial irregularities against the respondent run into crores of rupees under multiple heads. The inquiry officer has found ten charges proved whereas six charges have not been proved.*

Because of grave and serious allegations of financial irregularities, the order or removal cannot be said to be unjust."

6. **Boloram Bordolii Vs. Lakhmi Gaolla Bank & Ors. (2021 LLR 316)** wherein it is held that-

" *In banking services, procedural guidelines are required to be followed meticulously and any deviation will lead to erosion of public trust on Banks, not proper in any case"*.

7. **Deputy General Manager, (Appellate Authority) and others Vs. Ajai Kumar Srivastava (2021 (168) FLR, 650) wherein it is held that-**

" *In banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee- Judgment of High Court passed by Division bench set aside- Appeals allowed*."

8. **United Bank of India Vs. Bachan Prasad Lall (2022 LLR 355)** wherein it is held that- *Dismissal of a Bank employee from service after holding enquiry, proving guilt of commission of serious irregularities in discharging duty is justified. If the Industrial Adjudicator has held the enquiry fair and proper, exercising power under section 11A of the Industrial Disputes Act 1947, thereby substituting the punishment with reinstatement after lowering down of two stages in his basic salary with out back wages, is not proper mere that the employee had retired attaining superannuation. Giving weightage to domestic situation of employee for giving him any undue relief is against settled law that needless compassion should not be injected into judicial proceedings since he had committed fraud repeatedly by forging signatures and documents*."

9. **Janatha Bazar Vs. Secretary, Sahakari Noukarara Sangha Etc. (2000 II CLR, 568)** wherein it is held that-

" *Law is well-settled that once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service and as such impugned order passed by the High Court and the award of the Labour Court are set aside."*

15. मी वरील सर्व प्रकरणे वाचून पाहिली. वास्तविक, सदरची रक्कम सांभाळण्यासाठी संपूर्ण जबाबदारी मयत व्दितीय पक्षकारावर होती. सदरची जबाबदारी आकर्षक युक्तिवाद करुन अजिबात टाळता येणार नाही. उलटपक्षी, सदरचे पाच लाख रुपये गहाळ होण्याच्या कृतीमुळे ग्राहकांचा संस्थेवरील विश्वासाला तडा जातो. माझ्या मते, कुठल्याही संस्थेत काम करीत असताना ते प्रामाणिक काम करणे फक्त अपेक्षित नाही तर ते बंधनकारक आहे. विशेष करुन बॅकींग क्षेत्रात जनतेचा ठेवलेला पैसा असतो व तो सांभाळण्याची जबाबदारी बॅकेतील रोखपालावर असते. सदरची जबाबदारी ही अत्यंत निष्ठेने व पराकोटीच्या काळजीने सांभाळणे गरजेचे असते. एकप्रकारे धनावरील भुजंग ज्याप्रमाणे धनाची काळजी घेतो असेच कार्ये रोखपालाकडून अपेक्षित असते. पाच लाख रुपये भरुन दिले म्हणजे सदरच्या चुकीची पुर्तता झाली असे म्हणता येणार नाही. वास्तविक, अफरातफरीचा गंभीर स्वरुपाचा गुन्हा असून तो एकप्रकारे फौजदारी गुन्हा आहे. तसेच, अफरातफर एक रुपयांचा झाला अथवा लाख रुपयांचा झाला हे येथे पाहता येणार नाही. कायदयाचे प्रमुख सुत्र असे आहे की, 'कोणालाही स्वतःच्या चुकीचा फायदा घेता येणार नाही' त्यामुळे सदरील झालेली चौकशी व दिलेली शिक्षा निश्चितच सुसंगत असल्याने बॅकेने मयत व्दितीय पक्षकारावर केलेली कार्यवाही निश्चितच योग्य ठरते.

16. वास्तविक झालेले निलंबन कसे बरोबर नव्हते याबाबत कुठलाही अधिकचा पुरावा व्दितीय पक्षकाराच्या वारसांनी प्रकरणात दिलेला नाही. उलटपक्षी माझ्या पूर्वाधिकारी यांनी चौकशीबाबत काढलले निष्कर्ष हे चौकशी योग्य व बरोबर असल्याचे सांगतात. त्यामुळे व्दितीय पक्षकार व त्याचे वारस यांनी झालेली चौकशी औद्योगिक विवाद कायदयाचे तसेच नैसर्गिक न्यायतत्वाविरुध्द होती हे दाखविण्यास पूर्णपणे अपयशी ठरले आहे म्हणून मी मुद्दा क. 1 चे उत्तर नकारार्थी देत आहे.

<u>मुद्दा क. 2 च्या संदर्भात</u> :

17. दुर्देवाने व्दितीय पक्षकाराचा दि. 2.5.2021 रोजी निधन झाले असल्याने त्याला नोकरीत पुर्नस्थापना देण्याचा प्रश्न उद्भवत नाही. तसेच, त्याच्या वारसांना नोकरीत पुर्नस्थापना देण्याचा प्रश्न अस्तित्वात राहत नाही व मागील वेतन फरक इ. देण्याचा प्रश्नच अस्तित्वात राहत नाही. त्यामुळे मी मुद्दा क. 2 चे उत्तर नकारार्थी देत असून न्यायाच्या दृष्टीकोनातून खालील आदेश करीत आहे–

<u>:निवाडा:</u>

1. औद्योगिक विवादाच्या संदर्भ नं. 26 / 2010 चे उत्तर नकारार्थी देण्यात येते.

2. खर्चाबाबत कोणताही आदेश नाही.

3. या निवाडयाच्या चार प्रती सेक्शन ऑफिसर, गर्व्हमेंट ऑफ इंडिया/ भारत सरकार मिनीस्ट्री आफ लेबर / श्रम मंत्रालय, न्यु दिल्ली यांचेकडे प्रकाशीत करण्यासाठी पाठविण्यात याव्यात.

शरद जी.देशपांडे, पिठासीन अधिकारी तथा न्यायाधीश

दिनांक : 9.1.2024

युक्तिवाद ऐकल्याचा दि. 04.1.2024

श्रुतलेखन दिल्याचा दि. 09.01.2024

न्यायनिर्णय टंकलिखीत केल्याचा दि.09.01.2024

न्यायनिर्णय तपासून सही केल्याचा दि. 09.01.2024

नई दिल्ली, 14 जून, 2024

का. आ. 1206.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कमकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (81/2017) प्रकाशित करती है।

[सं. एल-12011/40/2017 –आई. आर. (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 14th June, 2024

S.O. 1206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.81/2017*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen.

[No. L-12011/40/2017- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present….

Radha Mohan Chaturvedi,

Presiding Officer(I/c.),

CGIT cum Labour Court,

Ahmedabad

Dated 17th April, 2024

Reference: (CGITA) No- 81/2017

The Regional Manager,

Syndicate Bank, Regional Office,

R.C. Dutt Road, Alkapuri,

Vadodara(Gujarat) …. …….First Party/Employer

The State Secretary,

Syndicate Bank Employees Union,

C/o Gujarat Bank Workers Union, ‘Rahbar’,

8, Jagnath Plot,

Rajkot – 360001 ……. ….Second Party/Workmen

Adv. for the First Party employer : None

Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour & Employment, New Delhi by reference adjudication Order No. L-12011/40/2017-IR(B-II) dated 07.09.2017 referred the dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of Syndicate Bank Employees Union(Registered), Rajkot for regularization of the services of Mrs. Bharti P. Machhi, working since 31/03/2011 as temporary Part Time Sweeper in the Syndicate Bank, Rajpipla Branch(District Narmada) is legal, just and proper? If so, to what relief the workman Smt. Bharti P. Machhi is entitled to?"

1. The matter was taken up today. None responded for either of the parties. The reference dates back to 07.09.2017. The case is fixed for filing statement of claim by the Second Party workman/union. Second Party workman sought time on 02.04.2019. Thereafter she has not been turning up for filing statement of claim despite giving several opportunities. The second party workman/union was afforded last opportunity on 23.09.2022 along with additional opportunities on 26.10.2022 and 27.09.2023, but of no avail.

2. It appears that either Second Party workman/union is not interested to proceed further in the matter or the said dispute may no more be in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties. The award is passed accordingly.

Let two copies of the Award be sent to the Appropriate Government for the needful and for publication U/s 17(1) of the Industrial Disputes Act, 1947.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 14 जून, 2024

का. आ. 1207.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जयपुर** के पंचाट (40/2013) प्रकाशित करती है।

[सं. एल-12012/51/2013 –**आई. आर.** (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 14th June, 2024

S.O. 1207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 40/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur* as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen

[No. L-12012/51/2013–IR (CM-II)]

SALONI, Dy. Director

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं. 40/2013

Reference No. L-12012/51/2013-IR (B-II) Dated: 13.08.2013

श्री रूघाराम पुत्र श्री राजूराम जाट, निवासी–आदर्श कॉलोनी, समदरी स्टेषन, पोस्ट– समदरी, जिला–बाड़मेर, (राजस्थान)

.....प्रार्थी

बनाम

मुख्य प्रबंधक, बैंक ऑफ बडौदा विश्वविद्यालय केम्पस रेजिडेन्सी रोड, जोधपुर जिला– जोधपुर (राजस्थान)

.....अप्रार्थीगण / विपक्षी

उपस्थितः–

अभिभाषक प्रार्थी की ओर से : कोई नहीं।

अभिभाषक अप्रार्थी की ओर से : मुनेष चन्द्र शर्मा, अभिभाषक।

: अधिनिर्णय :

दिनांक : 01. 11. 2023

1- श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 04.06.2012 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम की जावेगा) की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"*Whether the action of the management of the Bank of Baroda, Jodhpur in terminating Shri Rugaram S/o Shri Rajuram Jat from the post of Chowkidar vide verbal order dated 30.06.2008 is legal or justified? What relief the workman is entitled to*? ''

2- तदुपरांत प्रार्थी ने 09.01.2014 को अपने दावे का अभिकथन प्रस्तुत कर यह निवेदन किया कि प्रार्थी को विपक्षी ने दिनांक 01.06.2005 को सुरक्षा प्रहरी के पद पर नियुक्त किया। प्रार्थी ने 29.06.2008 तक लगाातार कार्य किया किंतु विपक्षी ने दिनांक 30.06.2008 को मौखिक रूप से प्रार्थी को सेवामुक्त कर दिया। प्रार्थी को सेवामुक्त करने के पूर्व अधिनियम की धारा 25 (F) में प्रावधानों के अनुसार नोटिस या नोटिस वेतन व प्रतिकर नहीं दिया गया। प्रार्थी जो कार्य करता था वह स्थाई प्रकृति का था– प्रार्थी को हटाने के उपरांत अन्य श्रमिकों को विपक्षी ने भर्ती किया तथा उनसे वही कार्य करवाया जाता है जो प्रार्थी करता था। प्रार्थी ने 240 दिन से अधिक अवधि तक लगातार कार्य किया है– विपक्षी ने श्रमिकों की वरिष्ठता सूची भी नहीं बनाई जो विधि अनुसार अपेक्षित थी। इसलिए वाद स्वीकार कर प्रार्थी की सेवा समाप्ति को अवैध घोषित किया जावे– तथा सेवा में निरंतरता तथा समस्त विगत वेतन परिलाभों सहित प्रार्थी को सेवा में बहाल किया जावे।

3- विपक्षी ने अपने वादोत्तर में यह कहा है कि विपक्षी बैंक में नियुक्ति हेतु भारत सरकार द्वारा स्पष्ट दिशा निर्देश जारी किये गये है– उनकी पालना किये बिना किसी व्यक्ति को बैंक में नियुक्त नहीं किया जा सकता हैं। विपक्षी बैंक द्वारा में धनंजय कैमीकल प्रा. लि. समदडी को ऋण दिया गया था जो ऋणी द्वारा नहीं चुकाया गया। बैंक द्वारा वसूली कार्यवाही के दौरान उक्त ऋणी की संपत्ति को 27.05.2005 को आधिपत्य में ले लिया गया था तथा इस संपत्ति की देखभाल हेतु तत्कालीन शाखा प्रबंधक ने ऋणी कंपनी में पूर्व में कार्यरत सिक्युरिटी गार्ड रूगाराम को अपने स्तर पर 2000 रू. प्रतिमाह पर रख लिया– प्रार्थी को जो राषि बैंक द्वारा दी गई वह ऋणी कंपनी के खाते में

बकाया दर्शायी गई। तदुपरांत ऋणी कंपनी व बैंक में समझौता हुआ व 2008 में कंपनी की संपत्ति कंपनी को लौटा दी गई व संपत्ति की देखभाल की आवश्यकता नहीं रहीं। प्रार्थी व विपक्षी के मध्य नियोजक व कर्मकार का संबंध नहीं रहा है। केयर टेकर कर्मकार की परिभाषा में नहीं आता है। विपक्षी क्षरा अधिनियम के किसी प्रावधान की अवहेलना नहीं की गई है। प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है– अतः वाद निरस्त किया जावे।

4- प्रार्थी ने अतिरिक्त कथन दिनांक 02.05.2016 को प्रस्तुत कर विपक्षी के अभिवचनों को अस्वीकार कर– वाद स्वीकार करने का आग्रह किया।

5- दिनांक 30.07.2019 से यह विवाद साक्ष्य प्रार्थी हेतु नियत किया जाता रहा। विभिन्न तिथियों पर आठ अवसर व लगभग 2 वर्ष 8 माह की अवधि व्यतीत होने व अन्तिम अवसर की चेतावनी सहित प्रार्थी को साक्ष्य हेतु अवसर दिये गये– किंतु 30. 03.2022 तक कोई साक्ष्य प्रार्थी ने प्रस्तुत नहीं की। अतः साक्ष्य हेतु अवसर समाप्त कर दिया गया। प्रार्थी की साक्ष्य समाप्त करने के आदेष दिनांक 30.03.2022 को अपास्त करवाने हेतु प्रार्थना पत्र भी प्रार्थी की अकारण अनुपस्थिति के कारण 06.12.2022 को निरस्त कर दिया गया।

6- विपक्षी ने इस स्थिति में कोई साक्ष्य प्रस्तुत नहीं करना चाहा।

7- दिनांक 01.11.2023 को मैंने अभिभाषक विपक्षी को सुना व पत्रावली का अवलोकन किया। अवलोकन से यह स्पष्ट है कि प्रार्थी ने अपने अभिवचनों को प्रमाणित करने हेतु कोई साक्ष्य प्रस्तुत नहीं की हैं इसलिए साक्ष्य के अभाव में यह प्रमाणित नहीं हो पाया है कि दिनांक 30.06.2008 को विपक्षी बैंक द्वारा प्रार्थी को चौकीदार के पद से अवैध एवं अनुचित रूप से सेवामुक्त किया गया हो। इसलिए प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

8- केन्द्र सरकार द्वारा संदर्भित विवाद का अधिनिर्णयन इसी प्रकार किया जाता हैं।

9- अधिनिर्णय की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 14 जून, 2024

का. आ. 1208.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स श्रेष्ठ डिटेक्टिव सिक्योरिटी प्रा. लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **आसनसोल** के पंचाट (27/2023) प्रकाशित करती है।

[सं. एल-39025/01/2024 –**आई. आर.** (बी-II)-24]

सलोनी, उप निदेशक

New Delhi, the 14th June, 2024

S.O. 1208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 27/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Asansol* as shown in the Annexure, in the industrial dispute between the management of M/s. Shresth Detective Security Pvt Ltd and their workmen.

[No. L-39025/01/2024 – IR (B-II)-24]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 27 OF 2023

PARTIES: Tarak Nath Gorai

Vs.

Management of M/s. Shresth Detective Security Pvt. Ltd.

REPRESENTATIVES:

For the Union/Workman: None.

For the Management: None.

INDUSTRY: Security Service

STATE: West Bengal.

Dated: 28.08.2023.

A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), The Deputy Chief Labour Commissioner (Central), Asansol under Ministry of Labour, Government of India, vide its Order **No. 1(05)/2023/E** dated 13.04.2023 has been pleased to refer the following dispute between the employer, that is the Management of M/s. Shresth Detective Security Private Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" Whether the action of the management of M/s. Shresth Detective Security Pvt Ltd termination from service to Sri Tarak Nath Gorai, Ex Security Guard is justified or not? If not, what relief the workman is entitled to? "

1. On receiving Order **No. 1(05)/2023/E** dated 13.04.2023 from the Deputy Chief Labour Commissioner (Central), Asansol, Ministry of Labour, Government of India, for adjudication of the dispute **Reference case No. 27 of 2023** was registered on 15.05.2023 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Notice was issued upon Sri Tarak Nath Gorai, the aggrieved workman and Ex-Security Guard working under M/s. Shresth Detective Security Private Limited, Durgapur. Director of the company was also notified but none appeared. On a perusal of report submitted by the Assistant Labour Commissioner (Central) and Conciliation Officer, Raniganj at Durgapur under Section 12(4) of Industrial Disputes Act, 1947 dated 06.04.2023 reveals that the management of M/s. Shresth Detective and Securities Private Limited, have terminated their workman Tarak Nath Gorai from service w.e.f. 01.08.2019 as per instruction of the main contractor M/s. FIS Payment Solutions and Services India Private Limited, engaged by the principal employer, the Bank of India, Benachity Branch, Durgapur. Since none of the party appeared on two consecutive dates after issuance of Notice under registered post, the Reference case is dismissed and a **No Dispute Award** is drawn up.

Hence,

O R D E R E D

that a **No Dispute Award** be drawn up in respect of the above Reference. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 14 जून, 2024

का. आ. 1209.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (B 41/1998) प्रकाशित करती है।

[सं. एल-12012/119/1997–IR (बी-II]

सलोनी, उप निदेशक

New Delhi, the 14th June, 2024

S.O. 1209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.B 41/1998*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur* as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen.

[No. L-12012/119/1997 – IR (B-II)]

SALONI, Dy. Director

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं. B 41/1998

Reference No. L-12012/119/1997-IR (B-II) **Dated: 27.11.1997**

उपाध्यक्ष, महाबैंक कर्मचारी संघ द्वारा बैंक ऑफ महाराष्ट्र, एम.आई. रोड़, जयपुर

(श्री जगदीश प्रसाद जांगिड़, मृतक) के विधिक प्रतिनिधि

1. श्रीमती बीना जांगिड़, (पत्नी)
2. प्रिया जांगिड़, (पुत्री)
3. संदीप जांगिड़, (पुत्र)
4. पूनम जांगिड़, (पुत्री)

.....प्रार्थीगण

बनाम

1. सहायक महाप्रबन्धक, बैंक ऑफ महाराष्ट्र, शाखा जयपुर

.....अप्रार्थीगण / विपक्षी

उपस्थितः—

प्रार्थीगण की ओर से : श्री आर.सी. जैन —अभिभाषक

अप्रार्थी की ओर से : कोई उपस्थित नहीं।

: अधिनिर्णय :

दिनांक : 21. 03. 2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 27.11.1997 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :—

   "Whether the action of the management of Bank of Maharashtra, New Delhi is justified in dismissing the services of Sh. Jagdish Prasad, Clerk vide their order dated 25.01.1995? If not, to what relief the workman is entitled to and from what date**?** **"**

2. दिनांक 28.06.1999 को इस अधिकरण द्वारा अधिनिर्णय पारित करते हुये यह कहा गया है कि पक्षकारों बीच कोई विवाद नहीं है। किंतु दिनांक 27.07.1999 को पुनः इस विवाद को विचारार्थ स्वीकार करते हुये दर्ज किया गया। प्रार्थी ने 17.08.1999 को दावे का अभिकथन प्रस्तुत किया। प्रार्थी का यह कथन है कि विवाद से संबंधित श्रमिक जगदीश प्रसाद जांगिड विपक्षी बैंक की जयपुर शाखा में स्थाई लिपिक के पद पर कार्यरत थे। श्रमिक जगदीश जांगिड को एक आरोप पत्र दिनांक 20.10.92 को विपक्षी ने दिया। इन आरोपों की जांच हेतु विपक्षी के क्षेत्रीय प्रबंधक ने आरोप—पत्र के उत्तर का अवसर दिये बिना ही जांच अधिकारी नियुक्त कर दिया। जांच अधिकारी ने अवैध रूप से श्री जगदीश प्रसाद जांगिड के विरूद्ध जांच संपन्न कर प्रतिवेदन विपक्षी को प्रेषित कर दिया जिसके आधार पर दिनांक 25.01.1995 को विपक्षी ने श्री जगदीश प्रसाद जांगिड को सेवामुक्त कर दिया। यह सेवामुक्ति अवैध एवं अनुचित जांच प्रक्रिया पर आधारित है और समझोते के प्रावधानों के विपरीत है, इसलिये अवैध है। प्रार्थी को मॉगे गये दस्तावेज उपलब्ध नहीं कराये गये। समस्त कार्यवाही दुर्भावनावश की गई है। आरोप जांच के दौरान सिद्ध नहीं हो सकें। अतः यह घोषित किया जावे की विपक्षी द्वारा की गई श्री जगदीश प्रसाद जांगिड की सेवामुक्ति दिनांक 25.01.1995 अनुचित एवं अवैध है। श्री जगदीश प्रसाद जांगिड़ को सेवा में निरंतरता एवं मिलने वाले समस्त आर्थिक परिलाभों सहित सेवा में पुनः लिये जाने का आदेश दिया जावें।

3. विपक्षी ने वादोत्तर में प्रार्थी की नियुक्ति संबंधी तथ्यों को स्वीकार किया किंतु यह कहा है कि क्षेत्रीय प्रबंधक ने निर्धारित प्रक्रिया के अनुसार जांच करते हुये प्राकृतिक न्याय के सिद्धान्तों का पालन किया, इसलिये जांच वैध है। सक्षम अधिकारी ने जांच के आधार पर आरोपों को प्रमाणित मानकर सेवामुक्ति का आदेश पारित किया है। प्रार्थी को मॉगे गये दस्तावेज और बचाव का अवसर प्रदान किये गये। सेवामुक्ति के विरूद्ध श्री जगदीश प्रसाद जांगिड द्वारा प्रस्तुत अपील पर सुनवाई का अवसर देने के बाद निर्णीत की गई। इसलिये सेवामुक्ति आदेश पूर्णतः वैध है, और दावे का अभिकथन निरस्त किये जाने योग्य है।

4. चूंकि यह प्रकरण प्रार्थी के विरूद्ध घरेलू जांच के आधार पर की गई सेवामुक्ति से संबंधित था, मेरे पूर्व पीठासीन अधिकारी द्वारा दिनांक 31.05.2001 को जांच की वैधता का परीक्षण कर जांच को प्राकृतिक न्याय

के सिद्धान्तों के विपरीत एवं अनुचित पाया। तत्पश्चात विपक्षी ने संबंधित श्रमिक श्री जगदीश प्रसाद जांगिड के विरूद्ध आरोप प्रमाणित करने हेतु साक्ष्य प्रस्तुतीकरण की अनुमति चाही। यह अनुमति प्रदान की गई। तत्पश्चात विपक्षी ने अपनी साक्ष्य में श्री अरूण हाड़ा, शाखा प्रबंधक को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श एम–1 से प्रदर्श एम–48 तक प्रलेख प्रदर्शित किये। तदुपरांत विखंडन साक्ष्य में प्रार्थी ने श्री जगदीश प्रसाद जांगिड तथा मनोहर बच्चानी को परीक्षित किया। कोई प्रलेख प्रदर्शित नहीं किया। दिनांक 26.12.2011 को विपक्षी द्वारा अपने लिखित तर्क प्रस्तुत किये गये, तथा पुनः दिनांक 09.09.2019 को भी लिखित तर्क प्रस्तुत किये गये। जिनकी प्रतियां श्री जगदीश प्रसाद जांगिड को उपलब्ध करवायी।

5. दिनांक 5.11.2019 को संबंधित श्रमिक श्री जगदीश प्रसाद जांगिड की मृत्यु हो जाने के उपरांत दिनांक 27.02.2020 को श्रमिक के विधिक प्रतिनिधियों द्वारा मृतक श्रमिक के स्थान पर उन्हें प्रत्यास्थापित करने का निवेदन किया गया। इस प्रार्थना–पत्र को स्वीकार कर मृतक के विधिक प्रतिनिधियों को अभिलेख पर ले लिया गया। दिनांक 05.10.2021 को प्रार्थीगण की ओर से संशोधित वाद–शीर्षक प्रस्तुत किया गया।

6. प्रार्थीगण की ओर से दिनांक 18.07.2022 को विपक्षी के लिखित तर्को का जवाब प्रस्तुत किया गया तथा मौखिक बहस और न्यायिक दृष्टांत प्रस्तुत करने हेतु अवसर चाहा गया।

7. प्रार्थी ने अपने लिखित एवं मौखिक तर्को में यह कहा है कि घरेलू जॉच के वैधता के परीक्षण के दौरान इस अधिकरण ने आरोप पत्र में वर्णित आरोप के एक भाग को पूर्णतया अनिषचित एवं अस्पष्ट माना है। विधि का यह सुस्थापित सिद्वांत है कि यदि आरोप अनिषचित एवं अस्पष्ट हो तो स्पष्ट एवं निशचित आरोप पत्र दिये जाने के बाद ही जॉच कार्यवाही की जा सकती है। किंतु प्रार्थी के विरूद्व जॉच को अनुचित पाये जाने के पश्चात संषोधित आरोप पत्र नहीं दिया गया इसलिये अधिकरण के समक्ष की गई जॉच भी अवैध है। विपक्षी के साक्षी श्री अरूण हाडा के शपथ पत्र के पेरा सं. 7 से 20 तक किये गये कथन अनिषचित एवं अस्पष्ट आरोप से संबंधित है जो पढ़े जाने योग्य नहीं है। इन कथनों में जिन प्रलेखों का उल्लेख किया गया है, उनसे संबंधित व्यक्तियो को साक्ष्य में प्रस्तुत ही नहीं किया गया। विपक्षी द्वारा 17.08.1992 से 20.08.1992 की घटनाओं के संबंध में लगाये गये आरोपों से संबंधित साक्षीगण को साक्ष्य में परीक्षित नहीं किया गया है, जिनके अभाव में प्रार्थी के विरूद्व आरोपों को सिद्व नहीं माना जा सकता है। यह भी महत्वपूर्ण है कि श्री अरूण हाड़ा की षिकायत पर प्रार्थी को आरोप पत्र दिया गया है लेकिन श्री हाड़ा द्वारा प्रस्तुत षिकायत न तो घरेलू जॉच के दौरान, न ही अधिकरण के समक्ष प्रस्तुत की गई। श्री अरूण हाड़ा ने यह कहा है कि यह षिकायत पत्रावली में नहीं है, संम्भव है रिकार्ड में हो। प्रार्थी एवं अरूण हाड़ा पृथक–पृथक श्रमिक/अधिकारी संगठनों के सदस्य रहें है, इसलिये श्री अरूण हाड़ा द्वारा प्रार्थी को प्रताड़ित किये जाने के उद्ेष्य से समस्त कार्यवाही की गई। किसी प्रत्यक्षदर्शी व्यक्ति को साक्ष्य में परीक्षित नहीं किया गया। इसलिये आरोप प्रमाणित नहीं माने जा सकते। उन्होनें अंत में यह भी निवेदन किया है कि यद्वपि प्रार्थी के विरूद्व आरोप प्रमाणित नहीं होते है, किंतु फिर भी यदि आरोप के किसी भाग को प्रमाणित माना जावे तो पारित किये गये दण्डादेष को दुराचरण के प्रति अननुपाती मानते हुये दण्डादेष संशोधित किया जाना चाहिये।

8. विपक्षी की ओर से दिनांक 09.09.2019 को लिखित तर्क प्रस्तुत किये गये है। विपक्षी का यह तर्क है कि विपक्षी के साक्षी श्री अरूण हाडा ने इस तथ्य की पुष्टि की है कि दिनांक 17.08.1992 को जो घटना घटित हुई थी उसका पूर्ण उल्लेख उनके शपथ पत्र में है। उस समय श्री जगदीश प्रसाद जांगिड़ भी उपस्थित थे। इस साक्षी से की गई प्रतिपरीक्षा में श्री अरूण हाड़ा की साक्ष्य किसी प्रकार खण्डित नहीं हुई। विपक्षी ने साक्ष्य में प्रदर्श एम.– 1, से प्रदर्श एम.–46, तक प्रलेख प्रदर्शित किये है जिन से सभी आरोपों की पुष्टि होती है। साक्ष्य से यह स्पष्ट है कि प्रार्थी का व्यवहार वरिष्ठ कर्मचारियों के साथ ठीक नहीं था। प्रार्थी के साक्षी मनोहर बच्चानी ने यह स्वीकार किया है कि वह दिनांक 17.08.1992 को बैंक शाखा में उपस्थित नहीं थे। प्रार्थी के अनुशासनहीनता पूर्ण व्यवहार के कारण बैंक के हितो पर प्रतिकूल प्रभाव पड़ा है। विपक्षी के साक्षी श्री अरूण हाड़ा, ने श्री अभय चौधरी द्वारा दिनांक 18.08.1992 को ही मौखिक षिकायत करना प्रमाणित किया है, जिसके आधार पर उन्होनें प्रार्थी को पत्र लिखा था। तत्पश्चात श्री अजय चौधरी ने लिखित षिकायत 20.08.1992 को दी थी। इस प्रकार प्रार्थी के विरूद्व सभी आरोप प्रमाणित हुये है। इसलिये दण्डादेष में कोई हस्तक्षेप अपेक्षित नहीं है।

9. दिनांक 26.02.2024 को प्रार्थी के विद्वान प्रतिनिधि की मौखिक बहस सुनी गई तथा प्रार्थी की ओर से प्रस्तुत निम्नांकित निर्णयों में पारित विधि एवं विपक्षी द्वारा प्रस्तुत लिखित तर्को पर ध्यान पूर्वक मनन किया गयाः

1. 1987 (55) FLR 695 सिदराम येलप्पा जाधव बनाम नरसिंह गिरजी मिल्स व अन्य।
2. 2011 (131) FLR 369 (सुप्रीम कोर्ट) अनिल गिलूरकर बनाम बिलासपुर रायपुर क्षैत्रीय ग्रामीण बैंक।
3. 1986 (53) FLR 172 सवाई सिंह बनाम स्टैट ऑफ राजस्थान।
4. सिविल अपील सं. 4410/2012 (सुप्रीम कोर्ट) निर्णय तिथि 01.06.2022 यूनियन ऑफ इण्डिया व अन्य बनाम सुरेश कुमार सिंह।
5. 2019 LLR 506 (पंजाब हरियाणा) यूको बैंक बनाम पीठासीन अधिकारी, CGIT कम लेबर कोर्ट–2 चंडीगढ़।
6. (2010) 2 WLN 23 (राजस्थान) यूनियन ऑफ इण्डिया बनाम राजेन्द्र प्रसाद शर्मा।
7. 2000 (84) FLR 3 (सुप्रीम कोर्ट) हरद्वारी लाल बनाम स्टैट ऑफ यू. पी.।
8. 2005 LAB I.C. 467 (इलाहाबाद) सर्वेश कुमार शर्मा बनाम स्टेशन डायरेक्टर एण्ड अपीयलेट ऑथोरिटी N.P.C. ऑफ इण्डिया।
9. 2009 (I) LLN 806 (सुप्रीम कोर्ट) रूपसिंह नेगी बनाम पंजाब नेशनल बैंक।
10. AIR 1976 (सुप्रीम कोर्ट) 330 मै. बरेली इलेक्ट्रिसिटी सप्लाई कम्पनी बनाम दी वर्कमेन व अन्य।
11. 2019 (2) WLC (राज.) UC 09 चीफ मेनेजर R.S.R.T.C. टोंक बनाम भवानी शंकर ढ़ोली।
12. 1998 (I) LLJ 694 (सुप्रीम कोर्ट) कलर केम लि. बनाम अलासपुरकर A.L. व अन्य।
13. 1984 (48) FLR 417 (सुप्रीम कोर्ट) वेद प्रकाश गुप्ता बनाम डेल्टन केबल इण्डिया प्रा. लि.।
14. 1982 (45) FLR 432 (सुप्रीम कोर्ट) रमाकांत मिश्रा बनाम स्टैट ऑफ यू. पी.।
15. 2008 (119) FLR 96 (सुप्रीम कोर्ट) मावजी सी. लेकुम बनाम सेण्ट्रल बैंक ऑफ इण्डिया।
16. 2005 (I) LLJ 467 बेग सिंह बनाम जनरल मेनेजर विजया बैंक व अन्य।

10. उभयपक्ष के तर्को, उपलब्ध सामग्री के परिशीलन एवं न्यायिक दृष्टातों में पारित विधि पर इस विवाद में निम्नांकित विचारणीय बिन्दु उत्पन्न हुये हैः

1. <u>बिन्दु सं.–1</u>

2. क्या प्रार्थी के विरूद्व घरेलू जॉच में विचारित आरोप अनिश्चित एवं अस्पष्ट होने के कारण प्रार्थी का समुचित प्रतिरक्षा करने का अवसर एवं अधिकार विक्षुब्ध हुआ है तथा दण्डादेश को अपास्त करते हुये विपक्षी को समुचित आरोप पत्र अधिकरण के समक्ष प्रस्तुत करने का निर्देश दिये बिना विपक्षी द्वारा आरोपों के संबंध में प्रस्तुत साक्ष्य ग्रहण किये जाने योग्य नहीं है?

प्रार्थी.....

3. <u>बिन्दु सं.–2</u>

4. क्या जॉच के दौरान प्रस्तुत प्रलेखों को संबंधित व्यक्तियों के साक्ष्य में परीक्षण बिना ही प्रमाणित माना गया तथा परिवादी श्री अरूण हाडा द्वारा प्रस्तुत परिवाद को जॉच एवं साक्ष्य के दौरान प्रस्तुत नहीं किये जाने से आरोप प्रमाणित नहीं माने जा सकते है?

प्रार्थी.....

5. <u>बिन्दु सं.–3</u>

6. क्या प्रार्थी के विरूद्व आरोप प्रमाणित हो जाने पर भी प्रार्थी के विरूद्व पारित दण्डादेश प्रार्थी के सिद्व दुराचरण के प्रति आश्चर्यजनक रूप से अननुपाती है जिसमें न्यायिक हस्तक्षेप आवश्यक है?

प्रार्थी.....

7. अनुतोषः–

11. उपयुर्क्त विचारणीय बिन्दुओ पर उभयपक्ष के तर्क उपलब्ध साक्ष्य तथा निर्णयज विधि पर मनन के पश्चात विनिश्चय इस प्रकार हैः

12. <u>विचारणीय बिन्दु सं.–1</u>

13. इस अधिकरण द्वारा दिनांक 31.05.2001 को घरेलू जॉच की वैधता का परीक्षण कर पारित आदेश के माध्यम से प्रार्थी के विरूद्व लगाये गये आरोपों के संन्दर्भ में निम्नानुसार प्रेक्षण किया गया था।

14- "In my view the above charges in respect of which the complaints against the applicant for the last about 15 years were considered is vague and, therefore, the applicant has been prejudiced in defending the above charges "

15. प्रार्थी की ओर से यह तर्क रहा है कि दिनांक 19.10.1977 से दिनांक 16.08.1992 तक प्रार्थी के विरूद्व जो परिवाद कथित रूप से प्रस्तुत हुये उनका कोई स्पष्ट एवं निशचित विवरण नहीं दिये जाने से प्रार्थी का इन परिवादों के प्रति प्रतिरक्षा का अधिकार क्षुब्ध हुआ है। इस संन्दर्भ में प्रार्थी द्वारा माननीय उच्चतम न्यायालय के निर्णयों अनिल गिलूरकर बनाम बिलासपुर रायपुर क्षैत्रीय ग्रामीण बैंक व अन्य एवं सवाई सिंह बनाम स्टैट ऑफ राजस्थान तथा माननीय बम्बई उच्च न्यायालय के निर्णय सिदराम येलप्पा जाधव बनाम नरसिंह गिरजी मिल्स व अन्य में पारित विधि का अवलम्ब लिया गया है।

16. माननीय उच्चतम न्यायालय ने इन निर्णयों में यह अवधारित किया है कि अस्पष्ट आरोपों पर कोई जॉच नहीं की जा सकती– आरोप अस्पष्ट होने पर दोषी कर्मचारी द्वारा अपनी प्रतिरक्षा उचित रूप से नही की जा सकती है। ऐसे आरोपों के संबंध में प्रस्तुत की गई साक्ष्य अनिशचित एवं दिखावटी होती है, जिसके आधार पर आरोप प्रमाणित नहीं माने जा सकते।

17. माननीय बम्बई उच्च न्यायालय ने यह कहा है कि जब जॉच प्रक्रिया अस्पष्ट आरोपों के कारण दूषित पायी गयी हो तो श्रम न्यायालय के पास दो विकल्प होते है। प्रथम, जॉच कार्यवाही को अपास्त कर दण्डादेष निरस्त कर दें एवं पुनः जॉच का आदेश दें, या प्रबंधन को उचित आरोप पत्र प्रस्तुत करने का निर्देष देते हुये उस पर स्वयं साक्ष्य अभिलिखित करें। अस्पष्ट आरोप होते हुये उन्हीं आरोपों पर प्रबंधन की साक्ष्य विचारित नहीं की जा सकती है।

18. इन निर्णयों में पारित विधि निशचित रूप से सुसंगत एवं मार्गदर्षक है। किंतु यहॉ यह उल्लेख किया जाना असंगत नहीं है कि दिनांक 19.10.1977 से दिनांक 17.09.1992 के मध्य प्रार्थी के विरूद्व प्रस्तुत 19 परिवादों में से दिनांक 19.08.1992 को प्रस्तुत परिवाद जो कि दिनांक 17, 18, 19 एवं 20.08.1992 को घटित घटनाओं से संबंधित है, में अभियोजित दुराचरण की सभी विशिष्टियॉ एवं अपेक्षित विवरण आरोप पत्र के माध्यम से प्रार्थी को उपलब्ध करवाये गये हैं। इसलिए, यह नहीं कहा जा सकता कि दिनांक 17.08.1992 से 20.08.1992 तक हुई कथित घटनाओं से संबंधित आरोप अनिशचित एवं अस्पष्ट हो।

19. इस तथ्यात्मक एवं विधिक परिदृष्य में दिनांक 17.08.1992 से 20.08.1992 के घटनाक्रम से संबंधित आरोप किसी प्रकार अनिषचित एवं अस्पष्ट प्रमाणित नहीं होते है। इसलिए इस अधिकरण द्वारा जॉच दूषित पाये जाने के उपरांत दण्डादेश को तत्समय अपास्त करते हुये विपक्षी को यह निर्देष दिया जाना कि वह समुचित आरोप पत्र अधिकरण के समक्ष प्रस्तुत करे एवं तदुपरांत ही विपक्षी द्वारा प्रस्तुत साक्ष्य को अभिलिखित कर ग्रहण करें, विधिक रूप से अध्यपेक्षित नहीं है। इसलिए जो आंषिक आरोप (दिनांक 17.08.1992 से 20.08. 1992 तक की घटनाओं से संबंधित) निशचित एवं स्पष्ट पाये गये है उनके संबंध में ही उभयपक्ष की साक्ष्य का विवेचन किया जाना अपेक्षित एवं विधि सम्मत प्रमाणित होता है। अतः यह बिन्दु आंषिक रूप से प्रार्थी के पक्ष में निर्णीत किया जाता है।

20. <u>विचारणीय बिन्दु सं.–2</u>

21. इस बिन्दु के संबंध में विपक्षी का यह लिखित तर्क है कि दिनांक 17.08.1992 को प्रार्थी द्वारा शाखा प्रबंधक श्री अरूण हाडा के समक्ष बैंक शाखा के अन्य कर्मचारीगण के साथ गाली गलौज व अभद्र व्यवहार किया जाना श्री अरूण हाडा के कथनों से भली भॉति प्रमाणित होता है। प्रतिपरीक्षा के दौरान श्री हाडा का परिसाक्ष्य किसी प्रकार खण्डित नहीं हुआ है। यह साक्षी दिनांक 18.08.1992 को शाखा में उपस्थित था एवं प्रार्थी के दुराचरण का साक्षी रहा है। श्री अभय चौधरी ने दिनांक 18.08.1992 को ही शाखा प्रबंधक श्री अरूण हाडा को मौखिक रूप से प्रार्थी के कृत्य की शिकायत की थी इसलिए श्री अभय चौधरी से लिखित

शिकायत प्राप्त होने के पूर्व ही श्री अरूण हाडा ने दिनांक 19.08.1992 को प्रार्थी को पत्र लिखा। इस पत्र को प्रार्थी ने फाड़ कर फेंक दिया। इस प्रकार प्रार्थी के विरूद्व विपक्षी की साक्ष्य से आरोप प्रमाणित होते है।

22. प्रार्थी की ओर से यह तर्क है कि श्री अरूण हाडा के अतिरिक्त अन्य कोई व्यक्ति एवं साक्षी विपक्षी ने अपनी साक्ष्य में परीक्षित नहीं किये है। जबकि तत्समय उन्हें बैंक की शाखा में उपस्थित बताया गया है। जिन प्रलेखों को साक्ष्य में प्रस्तुत किया गया है उनके लेखक को साक्ष्य में परीक्षित ही नहीं किया गया, इसलिए उन्हें प्रमाणित नहीं माना जा सकता है। उन्होंने अपने तर्क के समर्थन में माननीय उच्चतम न्यायालय द्वारा पारित निर्णयों यूनियन ऑफ इण्डिया व अन्य बनाम सुरेश कुमार सिंह, हरद्ववारी लाल बनाम स्टैट ऑफ यू. पी. का अवलम्ब लिया। माननीय उच्चतम न्यायालय ने इन निर्णयों में यह कहा है कि महत्वपूर्ण सुसंगत साक्षियों का परीक्षण न करने के कारण आरोप पूर्णरूपेण प्रमाणित नहीं माने जा सकते। ऐसे साक्षी जो आरोपित कर्मचारी की दशा को प्रमाणित कर सकते थे, को जॉच में परीक्षित नहीं किया गया। यह अपरीक्षण सारवान है, तथा जॉच अनुचित है।

23. माननीय पंजाब हरियाणा उच्च न्यायालय ने यूको बैंक बनाम पी. ओ., CGIT कम लेबर कोर्ट–2 चंडीगढ एवं माननीय राजस्थान उच्च न्यायालय ने यूनियन ऑफ इण्डिया बनाम राजेन्द्र प्रसाद शर्मा के निर्णयों में यह अवधारित किया है कि जॉच के दौरान परिवादी या अन्य स्वतंत्र साक्षी के साक्ष्य के अभाव में आरोप प्रमाणित नहीं होते। माननीय इलाहाबाद उच्च न्यायालय ने अपने निर्णय सर्वेश कुमार शर्मा बनाम स्टेशन डायरेक्टर एण्ड अपीयलेट ऑथोरिटी N.P.C. ऑफ इण्डिया में कहा है कि घटना के प्रत्यक्षदर्षियों को जब जॉच के दौरान परीक्षित नहीं किया गया हो तो जॉच अधिकारी का निष्कर्ष सारवान साक्ष्य पर आधारित नहीं कहा जा सकता।

24. माननीय उच्चतम न्यायालय ने रूपसिंह नेगी बनाम पंजाब नेशनल बैंक व अन्य में यह कहा है कि किसी दस्तावेज को जॉच में प्रमाणित करने हेतु संबंधित साक्षी को परीक्षित किया जाना अनिवार्य है। मै. बरेली इलेक्ट्रिसिटी सप्लाई कम्पनी बनाम दी वर्कमेन व अन्य में यह कहा गया है कि साक्ष्य अधिनियम के प्रावधान जॉच प्रक्रिया पर यद्यपि लागू नहीं होते, किंतु इसका यह तात्पर्य नहीं है कि गंभीरता पूर्वक स्पर्धित मामले के तथ्यों को सिद्व करने हेतु प्रमाण की आवश्यकता को दरकिनार किया जा सकता है।

25. इन निर्णयों में प्रतिपादित विधि से यह दिशा निर्देश प्राप्त होता है कि महत्वपूर्ण सुसंगत साक्षीयों के परीक्षण के अभाव में आरोप को प्रमाणित नहीं माना जा सकता। विचारणीय बिन्दु सं. 1 के विनिष्चय के आधार पर अब, दिनांक 17.08.1992 से दिनांक 20.08.1992 तक के प्रार्थी के कथित दुराचरण के संबंध में अभियोजित आरोप चूँकिं अस्पष्ट एवं अनिशचित नहीं पाये गये हैं, इनके संबंध में साक्ष्य का विवेचन अपेक्षित है।

26. विपक्षी द्वारा इस आरोप के संबंध में मात्र एक ही साक्षी श्री अरूण हाडा तत्कालीन शाखा प्रबंधक को साक्ष्य में परीक्षित किया गया है। इस साक्षी ने दिनांक 28.06.1989 से मई, 1993 तक विपक्षी बैंक की जयपुर शाखा में प्रबंधक के पद पर कार्यरत रहना कहा है। दिनांक 17.08.1992 से दिनांक 20.08.1992 तक साक्षी श्री अरूण हाडा एवं प्रार्थी दोनों का बैंक शाखा में डयूटी पर उपस्थित होना भी कहा है। इस तथ्य के प्रमाण स्वरूप प्रदर्श M–1 उपस्थिति रजिस्टर को प्रदर्शित किया गया है, जिस पर साक्षी एवं प्रार्थी के हस्ताक्षर संबंधित तिथियों के कॉलम में विद्यमान हैं। साक्षी श्री अरूण हाडा ने आगामी कथन में दिनांक 17.08.1992 को डयूटी के समय 1.50 पर प्रार्थी का उसकी सीट पर आना व मुरलीधर सामरिया को गाली देते हुये कथन करना तथा मुरलीधर सामरिया को प्रदर्श M–2 पत्र लिखना पुष्ट किया है। दिनांक 18.08.1992 के घटनाक्रम का वर्णन करते हुये अरूण हाडा ने प्रार्थी से हुये वार्तालाप एवं श्री अभय चौधरी से हुये व्यवहार एवं गाली गलौज का उल्लेख किया है। प्रार्थी द्वारा साक्षी से यह भी कहा गया है कि उसके कहे अनुसार काम न करने पर वह उसे (अरूण हाडा को) काम नहीं करने देगा। साक्षी श्री अरूण हाडा ने प्रदर्ष ड–3 चार्टा पर स्वयं द्वारा प्रार्थी के संबंध में टिप्पणी करना भी साक्ष्य में प्रमाणित किया है। इसी क्रम में दिनांक 19.08.1992 को प्रदर्श M–4 पत्र प्रार्थी को साक्षी द्वारा जारी करना और हनुमान के माध्यम से डिलीवरी हेतु उसे देना तथा प्रार्थी द्वारा पत्र न लेते हुये फाड़ देने व रसीद न देने का पृष्ठाकंन दिनांक 19.08.1992 को ही करना प्रमाणित किया है। प्रदर्श M–4 पर साक्षी श्री अरूण हाडा द्वारा किये गये पृष्ठाकंन के आधार पर प्रदर्श M–5 प्रेषण पुस्तिका में पत्र वाहक हनुमान की टिप्पणी को समर्थन मिलता है। अपने प्रतिपरीक्षण में साक्षी श्री अरूण हाडा ने स्पष्ट किया है कि दिनांक 17.08.1992 को 1.50 पर जो घटना हुई उस समय उसके अलावा प्रार्थी वहीं था इसके अलावा बैंक कार्य कर रहा था। कौन–कौन वहॉ था उसे याद नहीं है। फिर साक्षी ने मुरलीधर सॉवरिया या सॉभरिया का वहॉ होना कहा है। साक्षी ने स्वयं के केबिन या केबिन के बाहर

भी कार्यरत होना कहा है। यह उल्लेखनीय है कि साक्षी श्री अरूण हाडा से प्रतिपरीक्षा घटना के लगभग 18–19 वर्ष उपरांत की गई है, इसलिए साक्षी का यह कथन कि कतिपय तथ्य उसे याद नहीं है, नितांत स्वभाविक है।

27. साक्षी श्री अरूण हाडा ने प्रदर्श M–8 परिवाद के संबंध में यह स्पष्टीकरण दिया है कि श्री अभय चौधरी ने प्रार्थी के दुराचरण के संबंध में दिनांक 18.08.1992 को ही मौखिक षिकायत की थी। तथा श्री अभय चौधरी ने दिनांक 20.08.1992 को लिखित परिवाद साक्षी को दिया। दिनांक 18.08.1992 की घटना को साक्षी श्री अरूण हाडा ने भी सुना था क्योकि वह कुछ दूरी पर ही बैंक के हॉल में कार्य कर रहा था।

28. प्रार्थी की ओर से यह प्रबल तर्क है कि अरूण हाडा ने यह भी कहा है कि दिनांक 17.08.1992 को हुई घटना के संबंध में उसने अपने उच्चाधिकारियों को मौखिक एवं लिखित रूप में शिकायत की थी किन्तु वह लिखित शिकायत साक्ष्य में प्रस्तुत नहीं की गई है, इसलिए अरूण हाडा का कथन संदिग्ध है, इस तर्क के संबंध में साक्ष्य का परिशीलन यह दर्षाता है कि अरूण हाडा ने अपने प्रतिपरीक्षण में यह कहा है कि उसने 19 अगस्त को जो पत्र जगदीष प्रसाद जागिड़ को दिया था उसकी प्रति ही उच्चाधिकारियों को दी थी। इसके अलावा शिकायत का पत्र पत्रावली में नहीं है। प्रदर्ष M–4 की प्रति उच्चाधिकारियों को भेजे जाने का पृष्ठाकंन प्रदर्श ड–4 पर नहीं है। साक्षी ने पुनः स्पष्ट किया है कि जो कॉपी प्रेषित की जाती है उसी पर पृष्ठाकंन किया जाता है। इस प्रकार अरूण हाडा ने प्रदर्श M–4 पत्र दिनांक 19.08.1992 की प्रति ही उच्चाधिकारियों को पृष्ठाकंन करना कहा हैं इस स्थिति में श्री अरूण हाडा द्वारा दिनांक 17.08.1992 की घटना का विवरण उच्चाधिकारियों को प्रदर्श M–4 के रूप में प्रस्तुत किया जाना प्रमाणित होता है। प्रार्थी की ओर से प्रतिपरीक्षा में साक्षी को यह सुझाव नहीं दिया गया है कि प्रदर्श M–4 से भिन्न कोई परिवाद उच्चाधिकारियों को दिया गया हो जिसमें प्रार्थी के किसी दुराचरण का कोई उल्लेख ही न हो। इसलिए प्रार्थी का यह आक्षेप स्वीकार्य नहीं है।

29. विपक्षी के साक्षी श्री अरूण हाडा ने यह स्वीकार किया है कि शपथ पत्र में पेरा 7 से 21 तक के कथनों में वर्णित घटनाओं का आरोप पत्र में विवरण नहीं है। ये सभी घटनायें दिनांक 17.08.1992 के पूर्ववर्ती है जिनके संबंध में आरोप को अनिश्चित एवं अस्पष्ट मान लिया गया है।

30. प्रार्थी जगदीश प्रसाद जागिड़ ने यद्यपि अपने शपथ पत्र में किसी से दुर्व्यवहार करने के तथ्य से इंन्कार किया है किंतु दिनांक 17.08.1992 से दिनांक 20.08.1992 तक बैंक की शाखा में स्वयं की उपस्थिति को स्वीकार किया है। उसने कहा है कि दिनांक 17.08.1992 से दिनांक 18.08.1992 को वह तथा श्री अरूण हाडा शाखा में उपस्थित थे। प्रार्थी ने कहा है कि श्री अरूण हाडा के प्रति उसकी पुरानी व्यक्तिगत दुशमनी थी। मेरे विन्रम अधिमत से "व्यक्तिगत दुशमनी" एक ऐसी स्थिति है जो दोनो ही पक्षों को एक दूसरे से दुर्व्यवहार करने या अपमानित करने का अवसर एवं उत्तेजना दे सकती है। इसलिए, प्रार्थी द्वारा श्री अरूण हाडा के प्रति अपमानजनक कथन या दुर्व्यवहार किये जाने की संभावना निर्मूल नहीं कही जा सकती है। प्रार्थी का साक्षी मनोहर बच्चानी अपने प्रतिपरीक्षण में स्वीकार करता है कि उपस्थिति रजिस्टर प्रदर्श M–1 के अनुसार दिनांक 17.08.1992 को वह छुटटी पर था तथा शाखा प्रबंधक के कमरे से उसकी सीट दिखाई नहीं देती थी। इसलिए यह भी संभव है कि उसकी सीट से शाखा प्रबंधक के कमरे का दृष्य भी दिखाई नहीं देता हो। इस स्थिति में साक्षी मनोहर बच्चानी का प्रार्थी के संबंध में यह कहना कि वह दिनांक 17.08.1992 से दिनांक 18.08.1992 को शाखा में उपस्थित था तथा प्रार्थी ने किसी के साथ दुर्व्यवहार नहीं किया, अविश्वसनीय लगता है।

31. साक्ष्य के इस विवेचन से यह स्पष्ट है कि विपक्षी साक्षी श्री अरूण हाडा ने आरोप में वर्णित दिनांक 17.08.1992 से दिनांक 20.08.1992 तक के प्रार्थी के दुराचरण के संबंध में जो कथन किये है उनमें वर्णित घटनाओं का वह स्वयं प्रत्यक्षदर्शी रहा है। अरूण हाडा ने जो प्रलेख अपने साक्ष्य में प्रदर्शित किये है उन पर उसके स्वयं के हस्ताक्षर एवं पृष्ठाकंन विद्यमान है इसलिए ये प्रलेख प्रमाणित हुए है। किसी तथ्य को प्रमाणित करने हेतु बहुसंख्यक साक्ष्य आवष्यक नहीं है वरन् साक्ष्य की गुणवत्ता की अपेक्षा की जाती है। प्रार्थी द्वारा किये गये दुराचरण को साक्षी अरूण हाडा ने स्वयं प्रत्यक्षदर्शी के रूप में प्रमाणित किया है। एक लम्बे अंतराल के उपरांत बैंक शाखा में कार्यरत अन्य कर्मचारियों, जो प्रत्यक्षदर्षी भी रहे हों, को परीक्षित न किये जाने के आधार पर अरूण हाडा के कथनों को त्यागा नहीं जा सकता है। इसलिए प्रार्थी की ओर से

प्रस्तुत निर्णयों में प्रतिपादित विधि को मै ससंम्मान मार्गदर्शक समझता हूँ किंतु साक्ष्य के विवेचन से उत्पन्न स्थिति में तथ्यात्मक भिन्नता के कारण प्रार्थी के पक्ष में समर्थक नहीं पाता हूँ।

32. इस प्रकार विपक्षी द्वारा आरोप पत्र में वर्णित दिनांक 17.08.1992 से दिनांक 20.08.1992 के मध्य वर्णित घटनाक्रम जिसमें प्रार्थी द्वारा अभद्र व्यवहार व दुराचरण किया जाना अभियोजित है, विपक्षी के साक्ष्य के आधार पर प्रमाणित होता है। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

33. <u>विचारणीय बिन्दु सं.–3</u>

34. विचारणीय बिन्दु सं.–1 व 2 पर पारित विनिश्चय के आधार पर यह प्रमाणित हुआ है कि प्रार्थी के विरूद्व लगाये गये आरोपों में से मात्र दिनांक 17.08.1992 से दिनांक 20.08.1992 के मध्य प्रार्थी द्वारा किये गये दुराचरण से संबंधित आरोप अनिषचित एवं अस्पष्ट नहीं होने पर इन आरोपों के संदर्भ में प्रार्थी के विरूद्व विपक्षी द्वारा प्रस्तुत साक्षी श्री अरूण हाडा के परिसाक्ष्य से आरोप प्रमाणित पाये गये हैं। इन प्रमाणित आरोपों के अन्तर्गत प्रार्थी द्वारा विपक्षी बैंक की शाखा परिसर में शाखा प्रबंधक से अभद्र व्यवहार गाली गलौज /अपषब्दों का प्रयोग करते हुये अनुषासनहीनता किया जाना प्रमाणित पाया गया है। शाखा प्रबंधक द्वारा इस संबंध में मॉगे गये स्पष्टीकरण हेतु पत्र को प्रार्थी द्वारा फाड़ देना तथा कार्य अपूर्ण छोड़ देना भी प्रमाणित हुआ है। इनके अतिरिक्त अन्य आरोप अस्पष्ट एवं अनिश्चित होने से इनके संबंध में प्रस्तुत साक्ष्य को अग्राह्य माना गया है। यह स्पष्ट है कि प्रार्थी द्वारा किये गये उपयुर्क्त दुराचार एवं अभद्र व्यवहार के कारण बैंक को कोई आर्थिक क्षति नहीं पहुॅचाई गई है और न ही प्रार्थी द्वारा छल अथवा प्रवंचनापूर्ण व्यवहार करते हुये बैंक के हित को आघात पहुॅचाया गया है। प्रार्थी के व्यवहार को अभद्र, अमर्यादित एवं अवांछित व्यवहार की संज्ञा अवश्य दी जा सकती है। जिससें प्रार्थी से वरिष्ठ/समकक्ष, अधिकारियों/कर्मचारियों का अवमान सार्वजनिक रूप से हुआ।

35. माननीय सर्वोच्च न्यायालय ने अपने निर्णयों कलर केम लि. बनाम अलासपुरकर A.L. व अन्य, वेद प्रकाश गुप्ता बनाम डेल्टन केबल इण्डिया प्रा. लि., रमाकांत मिश्रा बनाम स्टैट ऑफ यू. पी. तथा मावजी सी. लेकुम बनाम सेण्ट्रल बैंक ऑफ इण्डिया में यह मार्गदर्शन दिया है कि यदि दण्डादेश सिद्व दुराचरण का आश्चर्यजनक रूप से अननुपाती हो तो यह विधिक शोषण एवं अनुचित श्रम व्यवहार कहलाता है। जब सिद्व दुराचरण इतना गंभीर प्रमाणित न हो कि सेवामुक्ति के दण्ड को आकर्षित करे तो सेवामुक्ति के दण्ड को सशोधित किया जाना उचित है। ऐसी अवस्था में न्यायालय की न्यायिक अर्न्तआत्मा उद्वेलित होती है और हस्तक्षेप आवष्यक हो जाता है। इसी क्रम में राजस्थान उच्च न्यायालय के निर्णय बेग सिंह बनाम जनरल मेनेजर विजया बैंक व अन्य में यह कहा गया है कि प्रबंधन द्वारा दिये गये दण्ड में हस्तक्षेप का परिक्षेत्र यद्यपि सीमित है फिर भी दण्ड के सिद्व दुराचरण के प्रति अननुपाती प्रमाणित होने पर सेवामुक्ति के दण्ड में हस्तक्षेप किया जाना उचित है।

36. विपक्षी बैंक द्वारा प्रार्थी को बिना नोटिस सेवामुक्ति का दण्ड दिया जाना प्रार्थी द्वारा विगत में किये गये दुराचरण एवं अभद्र व्यवहार में अपेक्षित सुधार न लाने व आदतन दुराचारी होने के आधार पर दिया जाना प्रकट होता है। किंतु उक्त पूर्ववर्ती दुराचरण संबंधी आरोप अस्पष्टता के कारण विधि सम्मत नहीं पाये गये है। प्रबंधन की तत्संबंधी साक्ष्य को अस्पष्ट आरोप के संबंध में ग्राह्य नहीं माना गया है। इस विधिक एवं तथ्यात्मक परिदृश्य में विपक्षी द्वारा प्रार्थी के विरूद्व प्रमाणित हुये दुराचरण के आधार पर बिना नोटिस सेवा समाप्ति का दण्ड दिया जाना इस अधिकरण की न्यायिक अर्न्तआत्मा को उद्वेलित करने हेतु पर्याप्त है क्योंकि यह दण्ड प्रार्थी के विरूद्व सिद्व किये गये दुराचरण का स्पष्ट रूप से अननुपाती होना प्रमाणित होता है, जिसमें न्यायिक हस्तक्षेप आवश्यक है। अतः यह बिन्दु प्रार्थी के पक्ष में निर्णीत किया जाता है।

37. <u>अनुतोषः–</u>

38. विचारणीय बिन्दु सं. 3 पर प्राप्त निष्कर्ष के आधार पर प्रार्थी के विरूद्व विपक्षी द्वारा पारित किया गया सेवा समाप्ति का दण्ड प्रार्थी के विरूद्व सिद्व किये गये दुराचरण का अननुपाती पाया गया है, जिसमें न्यायिक हस्तक्षेप अपेक्षित है। इस संदर्भ में इस विवाद के सुसंगत तथ्यों एवं परिस्थितियों पर विचार किया गया।

39. प्रार्थी की मृत्यु इस विवाद के लंबित रहते हुये ही हो चुकी है। दिनांक 31.12.2010 को प्रार्थी की सेवा निवृत्ति हो जाना भी, दण्डादेश अपास्त होने की स्थिति में संभव रहा है। यह भी एक स्वीकृत तथ्य है कि प्रार्थी के विरूद्व सेवा समाप्ति का दण्ड पारित होने के ष्चात से प्रार्थी ने विपक्षी बैंक में कोई कार्य नहीं

किया है तथा प्रार्थी को उसके विरूद्व लगाये गये सभी आरोपों से दोषमुक्त भी नहीं किया गया है। प्रार्थी ने विवाद के लंबित रहने के दौरान बैंक के सेवा नियमों के अनुसार निर्वाह भत्ता प्राप्त करने हेतु अधिकरण से आदेश भी प्राप्त किया है। इसलिए अधिनियम की धारा 11 (क) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में प्रार्थी के विरूद्व पारित बिना नोटिस सेवा समाप्ति के दण्डादेश को अपास्त करते हुये इसके स्थान पर प्रार्थी के विरूद्व तीन वार्षिक वेतन–वृद्धियॉ संचयी प्रभाव से रोके जाने का दण्ड दिया जाता है। प्रार्थी को उसकी सेवा समाप्ति तिथि से काल्पनिक (Notional) रूप से पुनः सेवा में बहाल मानते हुये सेवा–निवृत्ति तिथि तक सेवा में निरंतरता सहित 50 प्रतिशत विगत वेतन/परिलाभों का भुगतान प्राप्त करने का अधिकारी घोषित किया जाता है। प्रार्थी को भुगतान की गई निर्वाह भत्ते की राशि विगत वेतन परिलाभों में से समायोजित की जावे।

40. विपक्षी आगामी दो माह की अवधि में इस आदेश का अनुपालन करते हुये मृतक प्रार्थी श्री जगदीश प्रसाद जांगिड को देय समस्त धनराषि का भुगतान मृतक प्रार्थी के इस विवाद में अभिलिखित विधिक प्रतिनिधियों को करे, अन्यथा देय राशि पर 9 प्रतिशत वार्षिक ब्याज दर से ब्याज का भुगतान भी प्रार्थीगण को देय होगा।

41. श्रम मंत्रालय भारत सरकार द्वारा संदर्भित विवाद का न्याय निर्णयन उपर्युक्त अनुसार किया जाता है।

42. अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम, की धारा 17 (1) के अंतर्गत प्रकाषनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

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नई दिल्ली, 14 जून, 2024

का. आ.. 1210.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **पंजाब नैशनल बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जयपुर** के पंचाट (19,27,28,30/2017) प्रकाशित करती है।

[सं. एल-12012/39/2017-**आई. आर.(बी**-II)]
[सं. एल-12012/33/2017-**आई. आर.(बी** -II)]
[सं. एल-12012/31/2017-**आई. आर.(बी**-II)]
[सं. एल-12012/53/2017-**आई. आर.(बी** -II)]

सलोनी, उप निदेशक

New Delhi, the 14th June, 2024

S.O. 1210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 19,27,28,30/2017*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12012/39/2017–IR (B-II)]
[No. L-12012/33/2017–IR (B-II)]
[No. L-12012/31/2017–IR (B-II)]
[No. L-12012/53/2017–IR (B-II)]

SALONI, Dy. Director

अनुलग्नक
केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर
पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

1. श्री राजेश सैनी पुत्र श्री हनुमान सहाय सैनी,

सी.जी.आई.टी. प्रकरण सं. 19/2017

Reference No. L-12012/39/2017-IR (B-II) Dated: 19.07.2017

2. श्री रमेश शर्मा पुत्र श्री भैंरोलाल शर्मा,

सी.जी.आई.टी. प्रकरण सं. 27 / 2017

Reference No. L-12012/33/2017-IR (B-II) Dated: 17.07.2017

3. श्री जीवन कुमार शर्मा पुत्र श्री देशराज शर्मा,

सी.जी.आई.टी. प्रकरण सं. 28 / 2017

Reference No. L-12012/31/2017-IR (B-II) Dated: 17.07.2017

4. श्री राजू वर्मा पुत्र श्री लक्ष्मण प्रसाद,

सी.जी.आई.टी. प्रकरण सं. 30 / 2017

Reference No. L-12012/53/2017-IR (B-II) Dated: 07.09.2017

सभी द्वारा–जनरल सेक्रेटरी, वर्कर्स आर्गेनाईजेशन, C.13 ओझा जी का बाग, गांधी नगर मोड़ जयपुर।

.....प्रार्थीगण

बनाम

2. क्षेत्रीय महाप्रबन्धक, पंजाब नेशनल बैंक, जोनल ऑफिस 2, नेहरू प्लेस, टोंक रोड, जयपुर।

3. सहायक महाप्रबन्धक, पंजाब नेशनल बैंक, MBC चेम्बर बिल्डिग ब्रांच, एम. आई. रोड, जयपुर।

.....अप्रार्थीगण / विपक्षी

उपस्थितः–

प्रार्थीगण की ओर से : श्री तुषार पंवार –अभिभाषक।

अप्रार्थीगण की ओर सेः श्री सुरेन्द्र सिंह (नालोट) अभिभाषक।

: अधिनिर्णय :

दिनांक : 15. 04. 2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 17.07.2017 से दिनांक 07.09.2017 तक विभिन्न तिथियों पर औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में उपर्युक्त चारों प्रार्थीगण के संबंध में औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किये गये। इन विवादों में तथ्यों की एकरूपता को दृष्टिगत रख सुविधा की दृष्टि से निम्नानुसार समेकित कर वर्णित किया जा रहा है :–

"क्या प्रबंधन पंजाब नैशनल बैंक, जयपुर का कर्मकारों सर्व श्री राजेश सैनी पुत्र श्री हनुमान सहाय सैनी ड्राईवर को दिनांक 05.08.2016, रमेश शर्मा पुत्र भैंरोलाल शर्मा ड्राईवर को दिनांक 05.08.2016, जीवन कुमार शर्मा पुत्र श्री देशराज शर्मा ड्राईवर को दिनांक 15.07.2016, एवं राजू वर्मा पुत्र श्री लक्ष्मण प्रसाद वर्मा ड्राईवर को दिनांक 08.08.2016 को नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नही तो कर्मकार किस अनुतोष को पाने के अधिकारी हैं?"

2. उपर्युक्त सभी विवादों में विपक्षीगण समान हैं एवं प्रार्थीगण के नियोजन की प्रकृति व पद भी समान हैं, मात्र सेवा समापन की तिथि ही पृथक पृथक है। इसलिए इन प्रकरणों को समेकित कर साक्ष्य एवं विधि का विवेचन एक साथ करते हुये अधिनिर्णय पारित किये जाने का निवेदन उभयपक्ष द्वारा किया गया। इन विवादों में उभयपक्ष के तर्क और अवलम्बित न्यायिक दृष्टांत भी समान ही हैं। इसलिए इन विवादों का न्याय निर्णयन करते हुये अधिनिर्णय एकीकृत रूप से पारित किया जा रहा है।

3. प्रार्थीगण ने अपने अपने दावों के अभिकथन पृथक पृथक प्रस्तुत किये है। प्रार्थीगण के अभिवचनों का संक्षिप्त वर्णन इस प्रकार हैः

4. प्रार्थी राजेश सैनी को दिनांक 15.08.2010 को, प्रार्थी रमेश शर्मा को दिनांक 07.06.2010 को, प्रार्थी जीवन कुमार को दिनांक 01.09.2006 को तथा राजू वर्मा को दिनांक 24.09.2008 को विपक्षी बैंक के वाहनों को चलाने हेतु बैंक के प्रबंधकों द्वारा ड्राईवरों के पद पर रखा गया था। प्रार्थीगण/ड्राईवर विपक्षी सं.–2 (प्रबंधक) के निर्देशों पर बैंक की गाडी चलाते थे। किंतु दिनांक 15.07.2016 से 08.08.2016 के मध्य पृथक पृथक तिथियों पर बिना किसी कारण के नोटिस दिये बिना विपक्षीगण ने प्रार्थीगण को सेवामुक्त कर दिया। प्रार्थीगण के स्थान पर नये ड्राईवरों की भर्ती कर ली गई। प्रार्थीगण की सेवा समाप्ति अधिनियम की धारा 25 F के प्रावधानों के विपरीत है। अतः सेवा समाप्ति को अवैध घोषित करते हुये प्रार्थीगण को सेवा में निरंतरता एवं विगत वेतन परिलाभों सहित सेवा में बहाल किया जावे।

5. विपक्षीगण ने इन चारों प्रकरणों में पृथक पृथक वादोत्तर प्रस्तुत किये हैं, जिनका संक्षिप्त वर्णन इस प्रकार हैः

6. बैंक प्रबंधक/अधिकारी को बैंक द्वारा प्रदत्त वाहन को चलाने हेतु प्रबंधकों द्वारा अपने स्तर पर ही व्यक्तिगत वाहन चालक की सेवायें निजी रूप से ली जाती हैं तथा निजी ड्राईवर प्रबंधक/अधिकारी को प्राप्त भत्तों के अन्तर्गत ही उनमें से वेतन भुगतान प्राप्त करता है। विपक्षीगण द्वारा प्रार्थीगण को कभी भी बैंक के कर्मकार के रूप में नियुक्त नहीं किया गया, न ही नियुक्ति पत्र दिया गया। प्रार्थीगण और विपक्षीगण के बीच नियोजक–कर्मकार के संबंध नहीं है। विपक्षी द्वारा अधिनियम के किसी भी प्रावधान का उल्लंघन नहीं किया गया। व्यक्तिगत ड्राईवर को बैंक में नियुक्ति पाने का अधिकार नहीं है। प्रार्थीगण ने विपक्षी के अधीन 240 दिन से अधिक कार्य नहीं किया। अतः वाद निरस्त किया जावे।

7. प्रार्थीगण की ओर से अपने अपने साक्ष्य में प्रार्थीगण ने स्वयं प्रार्थीगण राजेश सैनी, रमेष शर्मा, जीवन कुमार शर्मा एवं राजू वर्मा को परीक्षित किया। प्रलेखीय साक्ष्य में बैंक प्रबंधकों द्वारा जारी किये गये प्रमाणपत्रों एवं प्रार्थीगण के बैंक खातों की/पासबुकों की प्रतियॉ प्रदर्षित की गई है।

8. विपक्षीगण की ओर से इन प्रकरणों में साक्षी MW-1, सुजाता भट्टाचार्य मुख्य प्रबंधक (HR) को परीक्षित किया एवं प्रलेखीय साक्ष्य में प्रदर्श D–1 एवं प्रदर्श D–2, वित्त मंत्रालय भारत सरकार के पत्रों को प्रदर्शित किया है।

9. दिनांक 05.03.2024 को मेंने उभयपक्ष द्वारा प्रस्तुत लिखित एवं मौखिक तर्को, उपलब्ध साक्ष्य एवं उभयपक्ष द्वारा प्रस्तुत न्यायिक दृष्टांतों में पारित विधि पर ध्यानपूर्वक विचार किया। इन विवादों में निम्नाकिंत बिन्दु विचारणीय उत्पन्न हुये हैः

10- **विचारणीय बिन्दुः**

1. क्या प्रार्थीगण एवं विपक्षी बैंक के मध्य नियोजक –कर्मकार के संबंध अस्तित्व में है?

.....प्रार्थीगण

2. क्या प्रार्थीगण ने विपक्षी बैंक के अधीन सेवा समापन तिथि के पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य किया है तथा अधिनियम की धारा 25 F के प्रावधानों का विपक्षीगण द्वारा अनुपालन न किये जाने से प्रार्थीगण की सेवा का समापन अवैध है?

.....प्रार्थीगण

3. क्या प्रार्थीगण की सेवा समाप्त करने के उपरांत विपक्षी द्वारा नये ड्राईवरों की नियुक्ति की गई है?

.....प्रार्थीगण

4. अनुतोषः–

11- प्रार्थीगण का यह तर्क है कि यदि प्रार्थीगण प्रबंधकों के व्यक्तिगत ड्राईवर होते तो उन प्रबंधकों के स्थानातंरण पर प्रार्थीगण को भी स्थानांतरित कर दिया जाता, किंतु वे (प्रार्थीगण) एक ही स्थान पर बैंक की ही गाडी चलाते रहे। उक्त वाहन बैंक के स्वामित्व का था जिसका रखरखाव, ईधन व्यय आदि बैंक ही वहन करता था। प्रार्थीगण का वेतन बैंक द्वारा प्रार्थीगण के खातों में जमा करवाया जाता था। जो वेतन का

भुगतान करे वही नियोक्ता होता है। "निजी वाहन चालक" पद नाम "निजी सहायक" एवं "निजी सचिव" के तुल्य है जो कि बैंक के कर्मचारी ही प्रमाणित होते है। प्रदर्श D–1 एवं प्रदर्ष D–2, पत्रों में तिथि में काट–छॉट की गई है। वास्तव में यह पत्र प्रार्थीगण की सेवामुक्ति के बाद के हैं, इसलिए प्रयोज्य नहीं हैं। उन्होने अपने तर्को के समर्थन में निम्नाकिंत निर्णय प्रस्तुत किये हैः–

1. बैंक ऑफ बडौदा बनाम घैमर भाई हरजी भाई रेबारी AIR 2005 (सुप्रीम कोर्ट) 2799
2. डिवीजनल मेनेजर, यूको बैंक डिवीजन बनीपार्क बनाम रतन सिंह भाटी व अन्य RLWS 2006 (3) राजस्थान 2150।
3. यूनियन बैंक ऑफ इण्डिया बनाम मुजाहिद हुसैन व अन्य 2022 (2) SLR 706 (दिल्ली)।

12- विपक्षीगण का यह विरोधी तर्क है कि प्रार्थीगण बैंक द्वारा नियुक्त नहीं किये गये तथा प्रार्थीगण व विपक्षीगण के बीच नियोजक और कर्मकार का संबंध नहीं है। प्रार्थीगण बैंक अधिकारियों/प्रबंधकों द्वारा निजी हैसियत में नियुक्त किये गये ड्राईवर्स हैं जिनके वेतन का भुगतान प्रबंधकों को दिये जाने वाले भत्ते में से किया जाता है। यदि यह वेतन प्रार्थीगण के बैंक खातों में जमा भी करवा दिया जाता हो तो मात्र इसी आधार पर प्रार्थीगण बैंक के कर्मचारी नहीं बन जाते है। प्रार्थीगण के कार्यो पर नियन्त्रण एवं निर्देशन संबंधित प्रबंधक का ही रहता है, बैंक का नहीं। प्रार्थीगण ने प्रबंधकों के भत्ते से उनके वेतन भुगतान का तथ्य स्वीकार भी किया है। प्रार्थीगण की नियुक्ति बैंक की विहित चयन प्रक्रिया के अन्तर्गत नहीं की गई है। प्रार्थीगण द्वारा प्रस्तुत प्रमाण पत्र उनकी बैंक में 240 दिन की सेवा किये जाने का प्रमाण नहीं है। उन्होने अपने तर्को के समर्थन में निम्नांकित निर्णयों में प्रतिपादित विधि का अवलम्ब लिया हैः

1. एन. वीरप्पन बनाम चेयरमेन एण्ड मेनेजिंग डायरेक्टर पंजाब एण्ड सिंध बैंक नई दिल्ली Writ petition No. 16147/2005 (मद्रास) आदेश तिथि 19.09.2013
2. इलाहाबाद बैंक ड्राईवर्स ऐसो. व अन्य बनाम यूनियन ऑफ इण्डिया FMA la- 830/2004 निर्णय तिथि 25.02.2009 (कलकत्ता)।
3. सेक्रेटरी, स्टैट ऑफ कर्नाटक बनाम उमा देवी व अन्य (2006) 4 SCC,
4. स्टैट ऑफ हिमाचल प्रदेश बनाम सुरेश कुमार वर्मा व अन्य (1996) 7 SCC 562।
5. मोहम्मद अली बनाम स्टैट ऑफ हिमाचल प्रदेष (2018) 15 SCC 641।
6. सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम डाया भाई अमर सिंह (2005) 8 SCC 750।
7. सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम गंगाबेन लालजी भाई 2006 SCC (L&S) 1623।
8. रेंज फोरेस्ट ऑफीसर बनाम एस. टी. हादीमनी AIR 2002 सुप्रीम कोर्ट 1147।
9. म्युनिसिपल कारपोरेषन फरीदाबाद बनाम सिरी निवास 2004 (5) SLR 816।

13- उभयपक्ष द्वारा प्रस्तुत तर्को, साक्ष्य एवं निर्णयों में प्रतिपादित विधि पर मनन के उपरांत विचारणीय बिन्दुओं पर निर्णय इस प्रकार हैः–

14- **विचारणीय बिन्दु सं.–1**

15- इस बिन्दु के संबंध में सभी प्रार्थीगण ने अपने साक्ष्य के मुख्य परीक्षण में ही यह कहा है कि उन्हें विपक्षी बैंक में अप्रार्थी सं. 2 द्वारा बैंक की गाडी चलाने हेतु ड्राईवर के पद पर रखा गया था। प्रार्थीगण अप्रार्थी सं. 2 के निर्देषों पर बैंक की गाड़ी चलाते थे– घर से बैंक व बैंक से घर लाते थे। प्रार्थीगण ने अपने साक्ष्य में जो प्रमाण पत्र प्रदर्षित किये है वह भी इस तथ्य की पुष्टि करते है कि उन्हें बैंक के सहायक महाप्रबंधक/वरिष्ठ क्षैत्रीय प्रबंधक/मण्डल प्रमुख जो कि बैंक के अधिकारी (म्यामबनजपअम) हैं, द्वारा वाहन चलाने के उदेष्य से निजी ड्राईवर के रूप में नियुक्त किया गया। यहॉ यह उल्लेख किया जाना आवष्यक है कि यह प्रमाण पत्र किसी भी प्रकार बैंक की विहित चयन प्रक्रिया के अनुसरण में सक्षम नियोक्ता प्राधिकारी द्वारा जारी नियुक्ति पत्र नहीं माने जा सकते हैं। विपक्षी बैंक की नियुक्ति हेतु एक विहित चयन प्रक्रिया है उसी के अन्तर्गत बैंक में किसी पद पर नियुक्ति की जा सकती है।

16- प्रार्थी राजेश सैनी का कथन है कि उसकी नियुक्ति मौखिक थी– कोई नियुक्ति पत्र नहीं था। उसके प्रमाण पत्रों में निजी ड्राईवर के रूप में काम करना सही लिखा है। राजेश सैनी ने यह भी स्वीकार किया है कि बैंक मेनेजर को बैंक की गाडी चलवाने के लिये बैंक द्वारा भत्ता दिया जाता था एवं उसी भत्ते से मेनेजर उसे वेतन का भुगतान करते थे।

17- प्रार्थी रमेश शर्मा ने अपने प्रतिपरीक्षण में कहा है कि उसे पता नहीं कि उसे निजी वाहन चालक के रूप में रखा गया हो। उसके द्वारा प्रस्तुत प्रमाण पत्रों में "निजी व्यवस्था के तौर पर" नियुक्त करना कैसे लिखा है, पता नहीं। यद्यपि प्रबंधक के भत्ते से वेतन दिये जाने का सुझाव रमेश शर्मा ने अस्वीकार किया है किंतु बैंक द्वारा वेतन भुगतान किया जाना प्रमाणित भी नहीं किया है।

18- प्रार्थी राजू वर्मा का कथन है कि उसे बैंक द्वारा वेतन पर्ची कभी जारी नहीं की गई। उसके द्वारा प्रस्तुत प्रमाण पत्रों में "निजी ड्राईवर के रूप में" दर्शाना सही है। उसे यह जानकारी नहीं है कि बैंक मेनेजर के भत्ते से उसका वेतन दिया जाता हो।

19- प्रार्थी जीवन कुमार ने यद्यपि प्रबंधक का निजी चालक होने के सुझाव को अस्वीकार किया है। किंतु यह स्वीकार कर लिया है कि उसे बैंक की वेतन पर्ची से भुगतान नहीं होता था तथा बैंक में उसकी हाजरी भी नहीं होती थी। यह एक स्वीकृत स्थिति है कि प्रार्थीगण की नियुक्ति एवं सेवा समाप्ति का कोई औपचारिक अथवा लिखित आदेश अस्तित्व में नहीं है।

20- प्रार्थीगण की ओर से प्रस्तुत निर्णय बैंक ऑफ बडौदा बनाम घैमर भाई हरजी भाई रेबारी में माननीय उच्चतम न्यायालय ने कहा है कि प्रबंधन के अधीन नियोजन में होने का तथ्य सिद्व करने का भार उस कर्मकार पर ही होता है जो कर्मकार होने का दावा करता है। जब कर्मकार इस तथ्य को सिद्व कर दे तथा प्रबंधन बैंक द्वारा इसका खण्डन नहीं किया गया हो कि कर्मकार ने बैंक की कार को चालक के रूप में सुसंगत अवधि में 240 दिन से अधिक चलाया कर्मकार ने तीन वाउचर्स वेतन भुगतान के प्रमाण स्वरूप प्रस्तुत किये जिनकी राशि बैंक के खाते में नामे भी लिखी गई, किंतु बैंक द्वारा इस तथ्य को खण्डित करने के लिए कोई साक्ष्य और स्पष्टीकरण नहीं दिया गया हो कि बैंक द्वारा पोषित पंजिका में कर्मकार के हस्ताक्षर किस उदेश्य से लिये गये, तो यह प्रमाणित माना जावेगा कि कर्मकार ने अपना दावा सिद्व कर दिया है। मेंने इस विधि पर विचार किया तो यह पाया कि यह अधिमत प्रार्थी के पक्ष में तथ्यात्मक भिन्नता के कारण सहायक नहीं है। प्रार्थीगण ने अपने साक्ष्य में बैंक द्वारा वेतन भुगतान किये जाने के संबंध में कोई वाउचर्स या वेतन पर्ची प्रस्तुत नहीं किये है। प्रार्थीगण ने ऐसा कोई उपस्थिति रजिस्टर भी जिसमें प्रार्थीगण के हस्ताक्षर हों, साक्ष्य में प्रस्तुत नहीं किया है। प्रार्थी राजेश सैनी ने स्पष्टरूप से तथा अन्य प्रार्थीगण ने जानकारी न होने का कथन कर, प्रलक्षित रूप में यह स्वीकार किया है कि बैंक मेनेजर को गाड़ी चलवाने के लिए बैंक द्वारा जो भत्ता दिया जाता था उसी से बैंक मेनेजर ड्राईवर के वेतन का भुगतान करते थे। विपक्षीगण द्वारा प्रस्तुत प्रदर्श D–1 एवं प्रदर्श D–2, वित मंत्रालय भारत सरकार के पत्रों से भी इस कथन की पुष्टि होती है। यह पत्र दिनांक 23 जून 1997 को वित मंत्रालय द्वारा जारी किया गया। इस पत्र पर तिथि में काट फॉस अवश्य दृष्टिगत होती है किंतु विपक्षीगण द्वारा प्रस्तुत निर्णय एन. वीरप्पन बनाम चेयरमेन एण्ड मेनेजिंग डायरेक्टर पंजाब एण्ड सिंध बैंक नई दिल्ली एवं इलाहाबाद बैंक ड्राईवर्स ऐसो. व अन्य बनाम यूनियन ऑफ इण्डिया के निर्णयों में माननीय मद्रास एवं कलकत्ता उच्च न्यायालयों ने प्रदर्श D–1 पत्र का उल्लेख किया है जो कि दिनांक 23.06.1997 को जारी किया गया। इस स्थिति में यह काट फॉस सारवान प्रकट नहीं होती है। विपक्षी प्रबंधन ने प्रार्थीगण के कथनों का खण्डन, साक्षी सुजाता भट्टाचार्य, मुख्य प्रबंधक के कथनों से किया भी है। प्रार्थीगण द्वारा साक्ष्य में प्रस्तुत पासबुक/ बैंक खाते की प्रतियों से यह प्रमाणित नहीं होता है कि प्रार्थीगण के खातों में जमा दर्षायी गई राषि विपक्षी बैंक द्वारा वेतन भुगतान के रूप में जमा की गई हो तथा बैंक के खाते में वही राशि नामें लिखी गई हो। यह संभव है कि बैंक प्रबंधक द्वारा उसे प्राप्त हुये भत्ते में से प्रार्थीगण के खाते में यह राषि जमा करवायी गई हो। इन तथ्यों की भिन्नता के कारण यह विधि प्रार्थीगण के पक्ष में सहायक नहीं है।

21- डिवीजनल मेनेजर, यूको बैंक डिवीजन बनीपार्क बनाम रतन सिंह भाटी व अन्य में माननीय राजस्थान उच्च न्यायालय ने यह कहा है कि जब चालक को बैंक के कार्य हेतु बैंक द्वारा निर्धारित वेतन दिया जा रहा हो एवं वर्दी, जूते, धुलाई भत्ता तथा बोनस आदि का भुगतान अन्य बैंक कर्मियों के समान किया जा रहा हो– फिर भी बैंक द्वारा इन सुविधाओं का भुगतान डिवीजनल मेनेजर के माध्यम से किया जाना बैंक द्वारा छलपूर्ण

नीति अपनाये जाने का प्रमाण है। इस निर्णय में पारित विधि भी हस्तगत विवादों के तथ्यों से भिन्न है। प्रार्थीगण को बैंक द्वारा वेतन एवं भत्ते दिये जाने का तथ्य प्रमाणित ही नहीं हुआ है। प्रार्थीगण का, बैंक के निर्देशन/नियन्त्रण में कार्य करना भी सिद्व नहीं हुआ हैं। इनके स्थान पर प्रार्थीगण ने यह स्पष्ट कहा है कि वे अप्रार्थी सं. 2 के निर्देशों पर बैंक की गाडी चलाते थे। घर से बैंक व बैक से घर लाते थे।

22- यूनियन बैंक ऑफ इण्डिया बनाम मुजाहिद हुसैन व अन्य में माननीय दिल्ली उच्च न्यायालय ने यह कहा है कि जब वे चालक जो पहले कारपोरेशन बैंक के अधिकारियों की सेवा में थे तथा अब यूनियन बैंक ऑफ इण्डिया में विलय होने के बाद, समान रूप से नियोजित कर्मचारियों का, यदि नियमितिकरण कर दिया गया हो तो अन्य को भी समान लाभ से वंचित नहीं रखा जा सकता। इस निर्णय में पारित विधि भी तथ्यात्मक भिन्नता के कारण प्रार्थीगण के पक्ष में सहायक प्रकट नही हुई है।

23- इसके विपरीत विपक्षीगण की ओर से प्रस्तुत निर्णय एन. वीरप्पन बनाम चेयरमेन एण्ड मेनेजिंग डायरेक्टर पंजाब एण्ड सिंध बैंक नई दिल्ली तथा इलाहाबाद बैंक ड्राईवर्स ऐसो. व अन्य बनाम यूनियन ऑफ इण्डिया के निर्णयों में माननीय मद्रास एवं कलकत्ता उच्च न्यायालय ने यह मार्गदर्षन दिया है कि जब ड्राईवर को बैंक के प्रबंधक द्वारा निजी चालक के रूप में काम पर रखा गया हो तो उसे किसी प्रकार बैंक का कर्मचारी नहीं माना जा सकता है। प्रार्थीगण पर बैंक का नियंत्रण होना एवं प्रार्थीगण द्वारा बैंक के निर्देषन में कार्य करने संबंधी कोई साक्ष्य प्रार्थीगण ने प्रस्तुत नहीं की है। माननीय दिल्ली उच्च न्यायालय ने अपने निर्णय सिडीकेट बैंक बनाम पवन कुमार 2024 LLR 249 (स्वतः अधिकरण द्वारा उद्धृत) में माननीय उच्चतम न्यायालय के निर्णय पंजाब नैशनल बैंक बनाम गुलाम दस्त गीर (1978) 2 SCC 358 में दिये गये मार्गदर्शन का उल्लेख करते हुये यह कहा है कि ऐसा ड्राईवर जो सीधे बैंक मेनेजर के नियंत्रण एवं पर्यवेक्षण के अधीन कार्य करता हो, बैंक का कर्मचारी नहीं होता, चाहे बैंक मेनेजर को ड्राईवर के परिश्रमिक का पुर्नभरण बैंक से प्राप्त हो जाता हो। इस तथ्यात्मक एवं विधिक परिदृष्य में प्रार्थीगण एवं विपक्षीगण के मध्य नियोजक एवं कर्मकार के संबंध अस्तित्व में होना प्रमाणित नहीं हुआ है। अतः यह बिन्दु प्रार्थीगण के विरूद्व निर्णीत किया जाता है।

24- **<u>विचारणीय बिन्दु सं.–2</u>**

25- इस बिन्दु के संबंध में यद्वपि प्रार्थीगण ने अपने सषपथ कथन में यह कहा है कि उन्होने विपक्षीगण के अधीन 240 दिन से अधिक अवधि तक कार्य किया है। किंतु उन्होने यह भी स्वीकार किया है कि उन्हें कोई नियुक्ति पत्र बैंक ने नहीं दिया तथा बैंक प्रबंधक द्वारा जारी किये गये प्रमाण पत्र ही इस संबंध में प्रस्तुत किये है। इनके अतिरिक्त अन्य कोई प्रलेख बैंक के अधीन कार्य करने के संबंध में प्रार्थीगण ने प्रस्तुत नहीं किये है। बिन्दु सं. 1 के अन्तर्गत प्राप्त निष्कर्ष के अनुसार उभयपक्ष के मध्य नियोजक एवं कर्मकार का संबंध भी प्रमाणित नहीं हुआ है।

26- विपक्षी द्वारा अवलंबित निर्णयों मोहम्मद अली बनाम स्टैट ऑफ हिमाचल प्रदेष, सुरेन्द्र नगर डिस्ट्ररिक्ट पंचायत बनाम डाया भाई अमर सिंह, सुरेन्द्र नगर डिस्ट्ररिक्ट पंचायत बनाम गंगाबेन लालजी भाई, रेंज फोरेस्ट ऑफीसर बनाम एस. टी. हादीमनी एवं म्युनिसिपल कारपोरेषन फरीदाबाद बनाम सिरी निवास के निर्णयों में माननीय उच्चतम न्यायालय ने यह मार्गदर्शन दिया है कि यदि कर्मकार द्वारा सेवा समाप्ति के पूर्ववर्ती एक वर्ष में 240 दिन से अधिक सेवा पूर्ण न की गई हो तो अधिनियम की धारा 25 F के प्रावधान प्रायोज्य नहीं होगें। कर्मकार को यह प्रमाणित करना होगा कि उसके और प्रबंधक के बीच नियोजक और कर्मकार का संबंध है। वेतन भुगतान के अभिलेखों की अनुपस्थिति में कर्मकार द्वारा मात्र शपथ पत्र प्रस्तुत करना, पर्याप्त साक्ष्य नहीं है।

27- इन निर्णयों में पारित विधि के प्रकाष में प्रार्थीगण स्पष्टरूप से विपक्षी बैंक के अधीन उनकी सेवा समाप्ति तिथि के पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य करने का तथ्य अपने साक्ष्य के आधार पर प्रमाणित नहीं कर पाये है। प्रार्थीगण ने न तो नियुक्ति संबंधी न ही वेतन भुगतान व उपस्थिति संबंधी कोई प्रमाण प्रस्तुत किये। इसलिए प्रार्थीगण की सेवा समापन के पूर्व विपक्षी बैंक द्वारा उन्हें एक माह का नोटिस, या नोटिस वेतन तथा छंटनी प्रतिकर दिये जाने की विधिक अध्यपेक्षा उत्पन्न ही नहीं होती है क्योंकि प्रार्थीगण को अधिनियम की धारा 25 F के प्रावधानों का संरक्षण प्राप्त नहीं है। अतः यह बिन्दु प्रार्थीगण के विरूद्व निर्णीत किया जाता है।

28- **<u>विचारणीय बिन्दु सं.–3</u>**

29- इस बिन्दु के संबंध में प्रार्थीगण ने कोई कथन अपने साक्ष्य में नहीं किया है। और यह भी प्रमाणित नहीं किया है कि उन्हें सेवामुक्त करने के पश्चात विपक्षी बैंक द्वारा नये ड्राईवरों की नियुक्ति कर ली गई हो। इसलिए यह बिन्दु साक्ष्य के अभाव में प्रार्थीगण के विरूद्व निर्णीत किया जाता है।

30- **अनुतोषः—**

31- विचारणीय बिन्दु सं. 1, 2, व 3 प्रार्थीगण के विरूद्व निर्णीत किये गये है। माननीय उच्चतम न्यायालय ने अपने निर्णयों सेक्रेटरी, स्टैट ऑफ कर्नाटक बनाम उमा देवी व अन्य तथा स्टैट ऑफ हिमाचल प्रदेश बनाम सुरेष कुमार वर्मा व अन्य में यह कहा है कि ऐसी नियुक्तियॉ जो नियुक्ति हेतु बनाये गये नियमों तथा प्रक्रिया का अनुसरण किये बिना की गई हो, नियोजित व्यक्तियों को कोई अधिकार प्रदान नहीं करती। इसलिए न्यायालय उनके नियमितीकरण, स्थाईकरण या सेवा में पुनः नियोजन हेतु निर्देश नहीं दे सकता। इस स्थिति में प्रार्थीगण विपक्षीगण से कोई अनुतोष प्राप्त करने के अधिकारी प्रमाणित नहीं हुये है।

32- केन्द्र सरकार द्वारा प्रेषित इन विवादों का निर्णयन इसी प्रकार किया जाता है।

33- अधिनिर्णय की एक–एक प्रति संबंधित विवाद पत्रावली में संलग्न की जावें तथा अधिनिर्णयों की प्रतिलिपियॉ समुचित सरकार को अधिनियम, की धारा 17 (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 14 जून, 2024

का. आ. 1211.—औद्योगिक विवाद अधिनियम, 1947 ;1947 का 14द्ध की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम्स के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण– सह – श्रम न्यायालय**, जबलपुर के पंचाट (LC/R/58/2023)को प्रकाशित करती है, जो केन्द्रीय सरकार को **06/06/2024** को प्राप्त हुआ था।

[सं. एल 20013/01/2024-**आई. आर. (सी एम-I)**]

मणिकंदन.एन, उप निदेशक

New Delhi, the 14th June, 2024

S.O. 1211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(**LC/R/58/2023*)* of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **AIIMS** and their workmen, received by the Central Government on **06*/06/2024***

[No. L-20013/01/2024 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/58/2023

Present: P.K.Srivastava

H.J.S..(Retd)

Vandna Devangan,
Adarsh Nagar, Ward-25, Birgaon,
Raipur, (C.G .)- 493221

Workman

Versus

The Director,
AIIMS, Tatibandh,
Raipur (C.G .) - 493221

M/s Principal Security & Allied Services Pvt. Ltd.
H-12, Green Park Extension,
New Delhi, - 110016

Management

A W A R D
(Passed on this 28th day of May-2024.)

As per letter dated 01/08/2023 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number RP-8(3-5)/2023-ES-III dt. 01/08/2023. The dispute under reference related to :-

" Whether the service of the workman has been illegally terminated by the contractor (M/s Principal Security and allied Services) working in AIIMS Raipur? Whether the workman is entitled for reinstatement of her services ? And, to what all remedies is the workman entitled to in relation to the present industirial dispute ? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

I have perused record. The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 28/05/2024

नई दिल्ली, 18 जून, 2024

का.आ. 1212.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**–II के पंचाट (112/2014) प्रकाशित करती है।

[सं.एल. 12012/01/2015–आई.आर. (बी–I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.112/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/01/2015 – IR (B-I)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.112/2014

Registered on:-02.03.2015

Sh. Sunil Kumar S/o Sh. Sunder lal, R/o H.No.101, Ward No.4, Farukh Nagar, Gurgaon.

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Rajindera Park Branch, Gurgaont(Haryana).

.....…Respondents/Management

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/01/2015-IR(B-I) Dated 22.01.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Sunil Kumar S/o Sh. Sunder Lal w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/management on 15.03.2010 at the payment of Rs.280/- per day with respondent no.3. Respondents/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman was appointed on 15.03.2010 at Farukh Nagar Branch and worked till 05.12.2013 under the Manager Samvardhan. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 135 and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 25.02.2016/23.02.2021 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record. The said application was dismissed by my Ld. Predecessor on 22.03.2021.

7. The workman filed written arguments, alleging therein that he was appointed as Peon on 15.03.2010 to 22.05.2010 in the office of Manager of Sarv Haryana Gramin Bank previously known as Gurgaon Gramin Bank, Farukh Nagar and thereafter from 23.10.2010 to 05.12.2013 at Rajinder Park Branch, Gurgaon for the whole day. The workman was drawing salary @Rs.280/- per day from the management. The workman was granted TA, DA for his travel allowance by the management. The management violated the provisions of the Industrial Disputes Act and did not supply appointment letter, PF account number, ESI card to the workman. The management got sign from the workman on plain papers on the pretext of using these papers for the service record and workman did sign these blank papers on the asking of the officials of the bank as the requirement of the service of the workman. The workman did not protest against the official for getting the signatures on the blank papers, being afraid of losing the job. The record pertaining to the salary of workman is available with the concerned-branch of the bank in the shape of debit slips and contingency account. The work of the workman was satisfactory and at no point of time any complaint was made against the work of the workman. On the change of the name of the bank to Sarv Haryana Gramin Bank, management started harassing the workman on one pretext or the other. The services of the workman were terminated orally on 05.12.2013 without issuing any notice or retrenchment compensation. The workman has completed more than 240 days in a calendar year in the employment of the management without any break. The work is still available with the management and the workman is no where gainfully employed. The workman filed an application for summoning the attendance record, salary record, provident fund details and ESI details of the workman but the management failed to supply the record. Adverse inference may kindly be drawn against the management for not producing the summoned record. The management replied to the RTI Application filed by the workman and the management accepted that workman having worked with the management. The management paid the wages to the workman and obtained the signatures of the workman on the receipt(Annexure P-1). On 28.04.2014, after terminating the services of workman, management advertised 175 post of Office Attendant(Multipurpose) Group C whereas workman is available to serve on this post. Workman along with others challenged this advertisement before the Hon'ble Punjab & Haryana High Court by filing CWP No.9254 of 2014 and the Hon'ble High Court directed that in the meanwhile, the applications made by the workmen for the above said posts shall be accepted by the respondent-bank subjected to the decision of the writ petition(Annexure P-2 & P-3). The management decided to withdraw the advertisement dated 28.04.2014 on 26.04.2016 and the said writ petition was disposed of as become infructuous(Annexure P-4). Earlier the management has issued letter dated 25.11.2009(Annexure P-5) raising requirement of Part Time worker and engaging part time workers for the smooth working of the branch. On 14.09.2010Annexure P-6) a letter was issued by the General Manger of Gurgaon Gramin Bank directing not to engage a particular person for more than 55 days in continuity and to ensure that the person engaged as per point no.1 mentioned above is not engaged for more that 230 days in a year, whereas the workman had worked more than 240 days in many calendar years. On 08.11.2011 a letter was issued to the workman by the management to appear for the post of office attendant on 17.11.2011 at 01.00 pm but the workman was not allowed to attend the interview for the reason best known to the management(Annexure P-7). The workman applied for the post advertised vide advertisement dated 28.04.2014(P-2) and copy of the challan form deposited by the workman is attached as Annexure P-8. During the pendency of the present case, the management issued circular dated 23.06.2023 wherein offices/branches has been directed to fix the charges of the daily wagers(Annexure P-9). Earlier also the management has employed person on the post and one of the employment letter issued is attached herewith as Annexure P-10.

8. Management has not filed any written argument but has argued orally.

9. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties.

10. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

11. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 15.03.2010 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Rajinder Park Branch, Gurgaon and used to work for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were

terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account.

12. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman has admitted that a few times payments were made by vouchers and sometime through bank and amount is deposited in his bank account. When he was being paid through vouchers and sometime through bank and the amount is deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 15.03.2010 to 05.12.2013 is not proved when the workman was having best evidence in his possession. So far as vouchers placed on record by the workman are concerned, these vouchers were never proved by calling official of the bank. Moreover, from these vouchers it cannot be said conclusively that workman worked 240 days prior to the year of his retrenchment.

13. It is added here that workman had moved an application on 25.02.2016/23.02.2021 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 27.07.2016/(23.02.2021) for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

14. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

15. In his written argument, the workman has placed on record certain documents which are irrelevant for proving that workman had worked for 240 days preceding the year of his termination. These documents which he has attached with his written argument are not admissible in evidence because these documents were never exhibited by the workman in his statement or by calling any other person.

16. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection under Section 25-F of the Act is not available to the workman.

17. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

18. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1213.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़** के पंचाट (113/2014) प्रकाशित करती है।

[सं.एल.-12012/02/2015-आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.113/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen**.**

[No. L-12012/02/2015- IR (B-I]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.113/2014

Registered on:-02.03.2015

Sh. Brij Mohan, S/o Sh. Zile Singh, R/o VPO Jijana, Distt. Sonepat(Haryana).

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.

2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).

3. The Sr. Manager, Serve Haryana Gramin Bank, Kharkhoda Branch, Sonipat(Haryana).

.....…Respondents/Managements

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/02/2015-IR(B-I) Dated 22.01.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Brij Mohan S/o Sh. Jile Singh w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"**

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/managements on 15.12.2008 at the payment of Rs.280/- per day with respondent no.3. Respondent/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman worked upto December, 2013 under the Manager R.K. Chauhan. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 25.02.2016 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record.

7. The workman filed written arguments, alleging therein that he was appointed as Peon on 15.12.2008 in the office of Manager of Sarv Haryana Gramin Bank previously known as Gurgaon Gramin Bank, Kharkoda, Sonepat under the Manager Sh. R.K. Chauhan where the workman worked till 05.12.2003 for the whole day. The workman was granted TA, DA for his travel allowance by the management. The management violated the provisions of the Industrial Disputes Act and did not supply appointment letter, PF account number, ESI card to the workman. The management got sign from the workman on plain papers on the pretext of using these papers for the service record and workman did sign these blank papers on the asking of the officials of the bank as the requirement of the service of the workman. The workman did not protest against the official for getting the signatures on the blank papers, being afraid of losing the job. The record pertaining to the salary of workman is available with the concerned-branch of the bank in the shape of debit slips and contingency account. The work of the workman was satisfactory and at no point of time any complaint was made against the work of the workman. On the change of the name of the bank to Sarv Haryana Gramin Bank, management started harassing the workman on one pretext or the other. The services of the workman were terminated orally on 05.12.2013 without issuing any notice or retrenchment compensation. The workman has completed more than 240 days in a calendar year in the employment of the management without any break. The work is still available with the management and the workman is no where gainfully employed. The workman filed an application for summoning the attendance record, salary record, provident fund details and ESI details of the workman but the management failed to supply the record. Adverse inference may kindly be drawn against the management for not producing the summoned record. The management replied to the RTI Application filed by the workman and the management accepted that workman having worked with the management. The management issued certificate of the employment of the workman with it whereas, the present management of Haryana Gramin Bank also accepted the employment of the workman with the new entity i.e. Haryana Gramin Bank(Annexure P-1). On 28.04.2014, after terminating the services of workman, management advertised 175 post of Office Attendant(Multipurpose) Group C whereas workman is available to serve on this post. Workman along with others challenged this advertisement before the Hon'ble Punjab & Haryana High Court by filing CWP No.9254 of 2014 and the Hon'ble High Court directed that in the meanwhile, the applications made by the workmen for the above said posts shall be accepted by the respondent-bank subjected to the decision of the writ petition(Annexure P-2 & P-3). The management decided to withdraw the advertisement dated 28.04.2014 on 26.04.2016 and the said writ petition was disposed of as become infructuous(Annexure P-4). Earlier the management has issued letter dated 25.11.2009(Annexure P-5) raising requirement of Part Time worker and engaging part time workers for the smooth working of the branch. On 14.09.2010Annexure P-6) a letter was issued by the General Manger of Gurgaon Gramin Bank directing not to engage a particular person for more than 55 days in continuity and to ensure that the person engaged as per point no.1 mentioned above is not engaged for more that 230 days in a year, whereas the workman had worked more than 240 days in many calendar years. On 08.11.2011 a letter was issued to the workman by the management to appear for the post of office attendant on 17.11.2011 at 01.00 pm but the workman was not allowed to attend the interview for the reason best known to the management(Annexure P-7). The workman applied for the post advertised vide advertisement dated 28.04.2014(P-2) and copy of the challan form deposited by the workman is attached as Annexure P-8. During the pendency of the present case, the management issued circular dated 23.06.2023 wherein offices/branches has been directed to fix the charges of the daily wagers(Annexure P-9). Earlier also the management has employed person on the post and one of the employment letter issued is attached herewith as Annexure P-10.

8. Management has not filed any written argument but has argued orally.

9. I have heard the learned counsel for the parties and have gone through the entire evidence placed on file by the parties.

10. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

11. In his affidavit Ex.WW1/A the workman has reiterated his case that he was appointed as Peon on 15.12.2008 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank under the Manager Sh. R.K. Chauhan where he worked till 05.12.2013. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, he has admitted that no appointment letter was

issued to him. He has stated that the concerned-bank paid salary through cheque. The salary amounting Rs.6000/- to Rs.7000/- was paid at the time of engagement which was subsequently enhanced upto Rs.8000/- to Rs.9000/-. Salary was paid monthly by the bank. He had also stated that he had no record with respect to his salary from the joining till his termination.

12. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman had admitted that salary was paid through cheque which was Rs.6000/- to Rs.7000/- at the time of his engagement and it was subsequently enhanced upto Rs.8000/- to Rs.9000/- but he had no record regarding receipt of salary from the date of joining till his termination. When he was being paid through cheque then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 15.12.2008 to 05.12.2013 is not proved when the workman was having best evidence in his possession.

13. It is added here that workman had moved an application on 18.12.2016 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 18.2.2016/(23.2.2021) for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

14. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

15. In his written argument, the workman has placed on record certain documents which are irrelevant for proving that workman had worked for 240 days preceding the year of his termination. These documents which he has attached with his written argument are not admissible in evidence because these documents were never exhibited by the workman in his statement or by calling any other person.

10. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection of Section 25-F of the Act is not available to the workman.

16. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

17. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1214.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (120/2014) प्रकाशित करती है।

[सं. एल.-12012/33/2015-आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.120/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/33/2015 – IR (B-I)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.
Present: Sh. Kamal Kant, Presiding Officer.

ID No.120/2014
Registered on:-17.03.2015
Sh. Charat Singh, S/o Sh. Kishore lal, R/o H.No.148/I-A, Village Rata Kalan, Tehsil Narnol, Distt. Mahender Garh.

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Branch Siloni(Main), Tehsil-Sohra, Distt. Gurgaon(HR).

.....…Respondents/Management

AWARD

Passed on:-23. 01. 2024

Central Government vide Notification No. L-12012/33/2015-IR(B-I) Dated 18.02.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Charat Singh S/o Sh. Kishori Lal w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"**

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/management on 02.07.1999 at the payment of Rs.280/- per day with respondent no.3. Respondents/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman was engaged on 02.07.1999 at Kapriwas Branch and worked upto 31.12.1999 under the Manager Bansal Kumar. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with a certificate issued by the bank-authority and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 18.02.2016/23.02.2021 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record. The application for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

7. The workman filed written arguments, alleging therein that he was appointed as Peon on 02.07.1999 in the office of Manager of Sarv Haryana Gramin Bank previously known as Gurgaon Gramin Bank, Silani Tehsil Sohna, Gurgaon under the Manager Sh. Bansal Kumar at Kapriwas Branch and the workman was asked to work at Katesara Branch of the bank where the workman worked from 02.07.1999 to 05.12.2003 for the whole day. The workman was drawing salary @Rs.280/- per day. The workman was granted TA, DA for his travel allowance by the management. The management violated the provisions of the Industrial Disputes Act and did not supply appointment letter, PF account number, ESI card to the workman. The management got sign from the workman on plain papers on the pretext of using these papers for the service record and workman did sign these blank papers on the asking of the officials of the bank as the requirement of the service of the workman. The workman did not protest against the official for getting the signatures on the blank papers, being afraid of losing the job. The record pertaining to the salary of workman is available with the concerned-branch of the bank in the shape of debit slips and contingency account. The work of the workman was satisfactory and at no point of time any complaint was made against the work of the workman. On the change of the name of the bank to Sarv Haryana Gramin Bank, management started harassing the workman on one pretext or the other. The services of the workman were terminated orally on 05.12.2013 without issuing any notice or retrenchment compensation. The workman has completed more than 240 days in a calendar year in the employment of the management without any break. The work is still available with the management and the workman is no where gainfully employed. The workman filed an application for summoning the attendance record, salary record, provident fund details and ESI details of the workman but the management failed to supply the record. Adverse inference may kindly be drawn against the management for not producing the summoned record. The management replied to the RTI Application filed by the workman and the management accepted that workman having worked with the management. The management issued certificate of the employment of the workman with it whereas, the present management of Haryana Gramin Bank also accepted the employment of the workman with the new entity i.e. Haryana Gramin Bank(Annexure P-1). On 28.04.2014, after terminating the services of workman, management advertised 175 post of Office Attendant(Multipurpose) Group C whereas workman is available to serve on this post. Workman along with others challenged this advertisement before the Hon'ble Punjab & Haryana High Court by filing CWP No.9254 of 2014 and the Hon'ble High Court directed that in the meanwhile, the applications made by the workmen for the above said posts shall be accepted by the respondent-bank subjected to the decision of the writ petition(Annexure P-2 & P-3). The management decided to withdraw the advertisement dated 28.04.2014 on 26.04.2016 and the said writ petition was disposed of as become infructuous(Annexure P-4). Earlier the management has issued letter dated 25.11.2009(Annexure P-5) raising requirement of Part Time worker and engaging part time workers for the smooth working of the branch. On 14.09.2010Annexure P-6) a letter was issued by the General Manger of Gurgaon Gramin Bank directing not to engage a particular person for more than 55 days in continuity and to ensure that the person engaged as per point no.1 mentioned above is not engaged for more that 230 days in a year, whereas the workman had worked more than 240 days in many calendar years. On 08.11.2011 a letter was issued to the workman by the management to appear for the post of office attendant on 17.11.2011 at 01.00 pm but the workman was not allowed to attend the interview for the reason best known to the management(Annexure P-7). The workman applied for the post advertised vide advertisement dated 28.04.2014(P-2) and copy of the challan form deposited by the workman is attached as Annexure P-8. During the pendency of the present case, the management issued circular dated 23.06.2023 wherein offices/branches has been directed to fix the charges of the daily wagers(Annexure P-9). Earlier also the management has employed person on the post and one of the employment letter issued is attached herewith as Annexure P-10.

8. Management has not filed any written arguments but has argued orally.

9. I have heard learned counsel for the parties and have gone through the entire evidence placed on file by the parties.

10. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

11. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 2.7.1999 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Silani Tehsil Sohna, Gurgaon for whole day. He was drawing salary @Rs.280/- per day from the management. He had completed

more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, he has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account.

12. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account. When he was being paid through voucher and sometime through bank and amount is deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 2.7.1999 to 05.12.2013 is not proved when the workman was having best evidence in his possession. As regards certificates issued by the Manager regarding works with Bank is concerned, the same have not been got proved by calling the concerned official from the bank and the same is inadmissible in evidence. Moreover, from this certificate it cannot be said conclusively that workman worked 240 days prior to the year of his retrenchment.

13. It is added here that workman had moved an application on 18.2.2016 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 18.02.2016/23.02.2021 for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

14. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

15. In his written argument, the workman has placed on record certain documents which are irrelevant for proving that workman had worked for 240 days preceding the year of his termination. These documents which he has attached with his written argument are not admissible in evidence because these documents were never exhibited by the workman in his statement or by calling any other person.

16. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection under Section 25-F of the Act is not available to the workman.

17. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

18. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1215.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (80/2014) प्रकाशित करती है।

[सं. एल.-12012/80/2014-आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.80/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/80/2014 – IR (B-I)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.80/2014

Registered on:-02.02.2015

Sh. Harish Kumar, S/o Sh. Shri Pal, Village & P.O. Aterna, District Sonepat(Haryana).

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Atrena Distt., Sonipat Branch, Haryana.

.....…Respondents/Managements

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/80/2014-IR(B-I) Dated 11.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of Serve Haryana Gramin Bank (formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Shri Harish Kumar S/o Sh. Shripal w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"**

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/managements on 2.5.2011 at the payment of Rs.280/- per day with respondent no.3. Respondent/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman worked from 02.05.2011 upto 05.12.2013 in Aterna Branch under the Manager Surender Kumar. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide

Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 73 and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 27.07.2016 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record. The application for production of record dated 27.7.2016 was dismissed by my Ld. Precessor on 22.3.2021.

7. The workman filed written arguments, alleging therein that he was appointed as Peon on 02.05.2011 in the office of Manager of Sarv Haryana Gramin Bank previously known as Gurgaon Gramin Bank, Aterna, Sonepat for the whole day. The workman was drawing a salary of Rs.280/- per day from the management. The workman was granted TA, DA for his travel allowance by the management. The management violated the provisions of the Industrial Disputes Act and did not supply appointment letter, PF account number, ESI card to the workman. The management got sign from the workman on plain papers on the pretext of using these papers for the service record and workman did sign these blank papers on the asking of the officials of the bank as the requirement of the service of the workman. The workman did not protest against the official for getting the signatures on the blank papers, being afraid of losing the job. The record pertaining to the salary of workman is available with the concerned-branch of the bank in the shape of debit slips and contingency account. The work of the workman was satisfactory and at no point of time any complaint was made against the work of the workman. On the change of the name of the bank to Sarv Haryana Gramin Bank, management started harassing the workman on one pretext or the other. The services of the workman were terminated orally on 05.12.2013 without issuing any notice or retrenchment compensation. The workman has completed more than 240 days in a calendar year in the employment of the management without any break. The work is still available with the management and the workman is no where gainfully employed. The workman filed an application for summoning the attendance record, salary record, provident fund details and ESI details of the workman but the management failed to supply the record. Adverse inference may kindly be drawn against the management for not producing the summoned record. The management paid salary to the workman against signatures and receipts(Annexure P-1). On 28.04.2014, after terminating the services of workman, management advertised 175 post of Office Attendant(Multipurpose) Group C whereas workman is available to serve on this post. Workman along with others challenged this advertisement before the Hon'ble Punjab & Haryana High Court by filing CWP No.9254 of 2014 and the Hon'ble High Court directed that in the meanwhile, the applications made by the workmen for the above said posts shall be accepted by the respondent-bank subjected to the decision of the writ petition(Annexure P-2 & P-3). The management decided to withdraw the advertisement dated 28.04.2014 on 26.04.2016 and the said writ petition was disposed of as become infructuous(Annexure P-4). Earlier the management has issued letter dated 25.11.2009(Annexure P-5) raising requirement of Part Time worker and engaging part time workers for the smooth working of the branch. On 14.09.2010Annexure P-6) a letter was issued by the General Manger of Gurgaon Gramin Bank directing not to engage a particular person for more than 55 days in continuity and to ensure that the person engaged as per point no.1 mentioned above is not engaged for more that 230 days in a year, whereas the workman had worked more than 240 days in many calendar years. On 08.11.2011 a letter was issued to the workman by the management to appear for the post of office attendant on 17.11.2011 at 01.00 pm but the workman was not allowed to attend the interview for the reason best known to the management(Annexure P-7). The workman applied for the post advertised vide advertisement dated 28.04.2014(P-2) and copy of the challan form deposited by the workman is attached as Annexure P-8. During the pendency of the present case, the management issued circular dated 23.06.2023 wherein offices/branches has been directed to fix the charges of the daily wagers(Annexure P-9). Earlier also the management has employed person on the post and one of the employment letter issued is attached herewith as Annexure P-10.

8. Management has not filed any written argument but has argued orally.

9. I have heard learned counsel for the parties and have gone through the entire evidence placed on file by the parties.

10. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240

days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

11. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 2.5.2011 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Aterna, Sonepat and used to work for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, he has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank-account. He has no document original from the bank. He had worked with bank throughout the month and year.

12. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman had admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank-account. He has no document original from the bank. When he was being paid through voucher and sometime through bank and amount is deposited in his bank-account then the same might have reflected in his bank-account. He has placed on record photocopy of saving bank account in which some amount has been credited but it is not clear that the amount credited by the respondent-bank. Similarly he has placed on record photocopy of some vouchers and from these vouchers it cannot be said that he has received some payment from the bank as these have not been proved by calling some person from the bank. Thus, it cannot be conclusively proved that prior to his termination on 5.12.2013 in the preceding year he has worked for 240 days in that year. Thus, his bald statement maintaining that he worked from 2.5.2011 to 05.12.2013 is not proved when the workman was having best evidence in his possession.

13. It is added here that workman had moved an application on 27.07.2016 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 27.07.2016/(23.02.2021) for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

14. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

15. In his written argument, the workman has placed on record certain documents which are irrelevant for proving that workman had worked for 240 days preceding the year of his termination. These documents which he has attached with his written argument are not admissible in evidence because these documents were never exhibited by the workman in his statement or by calling any other person.

16. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection under Section 25-F of the Act is not available to the workman.

17. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

18. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1216.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (79/2014) प्रकाशित करती है।

[सं एल.-12012/79/2015-आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.79/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/79/2015 – IR (B-I)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.79/2014

Registered on:-02.02.2015

Sh. Yogender S/o Sh. Raghubir Singh, R/o Village Bhiduki, Tehsil Hodel, Palwal(Haryana).

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Bhiduki Branch, Haryana.

.....…Respondents/Management

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/79/2015-IR(B-I) Dated 11.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. YogenderS/o Sh. Raghuvir SIngh w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"**

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/management on 02.05.2008 at the payment of Rs.280/- per day with respondent no.3. Respondents/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman was engaged on 02.05.2008 in Bhiduki Branch and worked upto 05.12.2013 under the Manager Vikram Chouhan. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at

Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 18.02.2016/21.02.2021 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record.

7. Both the parties have not filed any written arguments.

8. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties.

9. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

10. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 02.05.2008 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Bhiduki Branch, Gurgaon and used to work for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account.

11. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account. When he was being paid through voucher and sometime through bank and amount is deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 2.5.2008 to 05.12.2013 is not proved when the workman was having best evidence in his possession. So far as vouchers placed on record by the workman are concerned, these vouchers were never proved by calling official of the bank. Moreover, from these vouchers it cannot be said conclusively that workman worked 240 days prior to the year of his retrenchment.

12. It is added here that workman had moved an application on 18.02.2016 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 18.02.2016/23.02.2021 for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

13. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with

him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

14. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection under Section 25-F of the Act is not available to the workman.

15. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

16. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1217.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (70/2014) प्रकाशित करती है।

[सं.एल.-12012/78/2014-आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.70/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/78/2014 – IR (B-I)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.70/2014

Registered on:-02.02.2015

Sh. Net Ram, S/o Sh. Jagmohan, R/o VPO Katesra, Distt. Palwal, Haryana.

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Sikrauna Branch(Haryana).

.....…Respondents/Management

AWARD

Passed on:-23. 01. 2024

Central Government vide Notification No. L-12012/78/2014-IR(B-I) Dated 11.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Net Ram S/o Sh. Jagmohan w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"**

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/management on 10.11.2008 at the payment of Rs.280/- per day with respondent no.3. Respondents/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman was engaged on 10.11.2008 in Sikrana Branch and worked upto 04.01.2009 under the Manager I.P. Sharma. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 72 and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 27.07.2016 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record.

7. The workman filed written arguments, alleging therein that he was appointed as Peon on 10.11.2008 in the office of Manager of Sarv Haryana Gramin Bank previously known as Gurgaon Gramin Bank, Sikrona under the Manager Sh. I.P. Sharma till 04.01.2009 thereafter, workman was transferred to Area Office, Palwal and worked there from 05.01.2009 till 12.05.2011 and management asked the workman to work at various offices and the workman worked lastly in the office of Mohana, Balabhgarh till 05.12.2013 for the whole day. The workman was drawing salary @Rs.280/- per day. The workman was granted TA, DA for his travel allowance by the management. The management violated the provisions of the Industrial Disputes Act and did not supply appointment letter, PF account number, ESI card to the workman. The management got sign from the workman on plain papers on the pretext of using these papers for the service record and workman did sign these blank papers on the asking of the officials of the bank as the requirement of the service of the workman. The workman did not protest against the official for getting the signatures on the blank papers, being afraid of losing the job. The record pertaining to the salary of workman is available with the concerned-branch of the bank in the shape of debit slips and contingency account. The work of the workman was satisfactory and at no point of time any complaint was made against the work of the workman. On the change of the name of the bank to Sarv Haryana Gramin Bank, management started harassing the workman on one pretext or the other. The services of the workman were terminated orally on 05.12.2013 without issuing any notice or retrenchment compensation. The workman has completed more than 240 days in a calendar year in the employment of the management without any break. The work is still available with the management and the workman is no where gainfully employed. The workman filed an application for summoning the attendance record, salary record, provident fund details and ESI details of the workman but the management failed to supply the record. Adverse inference may kindly be drawn against the management for not producing the summoned record. The management replied to the RTI Application filed by the workman and the management accepted that workman having worked with the management(Annexure P-1). On 28.04.2014, after terminating the services of workman, management advertised 175 post of Office Attendant(Multipurpose) Group C whereas workman is available to serve on this post. Workman along with others challenged this advertisement before the Hon'ble Punjab

& Haryana High Court by filing CWP No.9254 of 2014 and the Hon'ble High Court directed that in the meanwhile, the applications made by the workmen for the above said posts shall be accepted by the respondent-bank subjected to the decision of the writ petition(Annexure P-2 & P-3). The management decided to withdraw the advertisement dated 28.04.2014 on 26.04.2016 and the said writ petition was disposed of as become infructuous(Annexure P-4). Earlier the management has issued letter dated 25.11.2009(Annexure P-5) raising requirement of Part Time worker and engaging part time workers for the smooth working of the branch. On 14.09.2010Annexure P-6) a letter was issued by the General Manger of Gurgaon Gramin Bank directing not to engage a particular person for more than 55 days in continuity and to ensure that the person engaged as per point no.1 mentioned above is not engaged for more that 230 days in a year, whereas the workman had worked more than 240 days in many calendar years. On 08.11.2011 a letter was issued to the workman by the management to appear for the post of office attendant on 17.11.2011 at 01.00 pm but the workman was not allowed to attend the interview for the reason best known to the management(Annexure P-7). The workman applied for the post advertised vide advertisement dated 28.04.2014(P-2) and copy of the challan form deposited by the workman is attached as Annexure P-8. During the pendency of the present case, the management issued circular dated 23.06.2023 wherein offices/branches has been directed to fix the charges of the daily wagers(Annexure P-9). Earlier also the management has employed person on the post and one of the employment letter issued is attached herewith as Annexure P-10.

8. Management has not filed any written argument but has argued orally.

9. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties.

10. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

11. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 10.11.2008 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Sikrona and used to work for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his account.

12. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account. When he was being paid through voucher and sometime through bank and amount is deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 10.11.2008 to 05.12.2013 is not proved when the workman was having best evidence in his possession. So far as vouchers placed on record by the workman are concerned, these vouchers were never proved by calling official of the bank. Moreover, from these vouchers it cannot be said conclusively that workman worked 240 days prior to the year of his retrenchment.

13. It is added here that workman had moved an application on 27.07.2016/23.02.2021 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 27.07.2016/23.02.2021 for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

14. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with

him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

15. In his written argument, the workman has placed on record certain documents which are irrelevant for proving that workman had worked for 240 days preceding the year of his termination. These documents which he has attached with his written argument are not admissible in evidence because these documents were never exhibited by the workman in his statement or by calling any other person.

16. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection of Section 25-F of the Act is not available to the workman.

17. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

18. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1218.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **पश्चिम रेलवे** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (96/2017) प्रकाशित करती है।

[सं.एल-41012/82/2016–आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.96/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen.

[No. L-41012/82/2016 – IR (B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/96/2017

Present: P.K.Srivastava

H.J.S..(Retd)

The Divisional Secretary,

Paschim Railway Karmachari Parishad

Western Railway, Ratlam Division,

Ratlam (MP) - 457001

Workman

Versus

The Divisional Railway Manager,

Western Railway,

Ratlam Division,

Ratlam (MP) – 457001

Management

A W A R D

(Passed on this 27Th day of February-2024.)

As per letter dated 07/07/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-41012/82/2016 (IR(B-I)) dt. 07/07/2017. The dispute under reference related to :-

"1. Whether Mr. Ramjilal Meena, Chowkidar was directly under the supervision of Sr. Section Engineer (Tele) Ratlam Division who submitted his performance reports for the year (2009- 10..2010-11 &2011-12)?

2. Whether the the performance reports for the three years (2009 to 2012)of Mr. Ramjilal Meena, Chowkidar at SSE/T, Ujjain, Ratlam Division, Western Railway, submitted by the Sr. Section Engineer(Tele), Ratlam Divn, were of same dated ? If yes, whether the action of the railway administration in denying the MACP w.ef. 2009 to him on the basis of these performance reports is justified and legal?

3. Whether Mr. Ramjilal Meena, Chowkidar at SSE/T, Ujjain, Ratlam Division, Western Railway, is entitled for his MACP in the year 2009 or not? If yes, what relief the concerned workman is entitled to?Railway, Ratlam Division, Who are doing duties at places outside Ratlam in field."

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of allotment of time and service of notice, the workman never turned up and submitted his statement of claim, due to which reference preceded ex-parte against the workman vide order dated December 27, 2021. Management filed its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of workman not proved the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 27/02/2024

नई दिल्ली, 18 जून, 2024

का.आ. 1219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय**, लखनऊ के पंचाट (पहचान संख्या **12/2014**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **11/06/2024** को प्राप्त हुआ था।

[सं.एल-22013/01/2024-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 12/2014*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 11***/06/2024.***

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 12/2014

BETWEEN

हरीराम पुत्र श्री रामलाल निवासी-ग्राम-पुरैना, पोस्ट-कटया, जिला – बस्ती

AND

1. प्रबन्धक (डिपो), भारतीय खाद्य निगम, बस्ती

2. क्षेत्र प्रबन्धक, भारतीय खाद्य निगम, जिला कार्यालय, गोरखपुर

3. महाप्रबन्धक, उ०प्र०, भारतीय खाद्य निगम, क्षेत्रीय कार्यालय, टी.सी. /3वी., विभूति खण्ड, गोमती नगर, लखनऊ - 206010

4. कार्यकारी निदेशक भारतीय खाद्य निगम, आंचलिक कार्यालय (उत्तरी) 2ए, 2बी, सेक्टर-24, नोएडा - 201301

5. ठेकेदार - विनोद कुमार पाण्डेय, मैनेजर श्री स्टार सिक्योरिटी, बस्ती

AWARD

On 24.03.2014 the claimant/workman has filed the present industrial dispute as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act); along with application for condonation of delay.

Learned counsel for applicant while pressing application for condonation of delay submits as under:

Applicant was appointed as security guard in the FCI, Depot Basti through contractor no. 5, contractor, Vinod Kumar Pandey, Manager, Three Star Security, Basti and w.e.f. 28.03.2006 he was not allowed to work and discharge his duties.

Learned counsel for applicant further submits that thereafter as per legal advice, given to the applicant, he approached Regional Labour Commissioner (Central), Lucknow on 14.08.2013 against alleged illegal termination/retrenchment of his services for conciliation, which failed vide dated 16.12.2013.

Counsel for applicant further submits that after failure of conciliations, the present industrial dispute has been filed before this Tribunal. Accordingly, learned counsel for applicant submits that in view of the above said facts and in view of the law as laid down in the following cases:

(i) Hon'ble Allahabad High Court in case of Milkiya Singh & others vs. Additional Commissioner Lucknow Division & ors in Writ C No. 3000066 of 1992 decided on 12.05.2022.

(ii) Hon'ble Supreme court in case of M/s Laxmi Srinivasa R and P Boiled Rice Mill v. The State of Andhra Pradesh & Anr. 2023 (1) ICC 279.

(iii) Hon'ble Jharkhand High Court in case of Rajesh Kumar vs. The Central Coalfields Limited & others in W.P. (L) No. 311 of 2022 decided on 11.03.2022

Accordingly, he submits that delay in filing present industrial dispute may be condoned.

Miss Deepti Tripathi, learned counsel for respondent submits that as in the present case, aggrieved by the alleged impugned action by which the services of the applicant was retrenched, he has approached this Tribunal by invoking the provisions of Section 2A of the Act read with section 2A (3) of the Act, so, in view of provisions as provided in section 2A (3) of the Act, as period of limitation is three years i.e. fixed period of limitation, thus, taking into consideration the provisions of section 2A(3) of the Act, present claim petition filed by the applicant on 24.03.2014 allegedly aggrieved by the order of retrenchment dated 28.03.2006 is totally illegal and arbitrary and even otherwise no cause of action has occurred against the FCI in the present case, so workman is not entitled for any relief, case is liable to be dismissed, barred by limitation.

I have heard learned counsel for parties and gone through the record.

First and foremost question to be decided in present case is whether the present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have carefully gone through the judgments cited by the applicant in *M/s Laxmi Srinivasa R and P Boiled Rice Mill (supra)* and from perusal of said judgments the position which emerged out that in all of said judgments the matter was under consideration that for condoning delay the provision u/s 14 of the Limitation Act, 1963 can be taken into consideration; however, in the present case in view of the facts and circumstances staged hereinabove, is concerned admittedly u/s 2A (3) of the Act, the period of limitation is three years so that is the fixed period limitation, as such, the benefit of section 14(2) of the Limitation Act cannot be accorded to the applicant. Further, in the case of *Rajesh Kumar (supra)* decided by Hon'ble Jharkhand High Court vide order dated 11.03.1973, the position which emerged out that applicant cannot be given any benefit because in the said matter Hon'ble High Court of Ranchi has held as under:

> *"In reply, learned counsel for the petitioner has submitted that such application is only required under Section 5 of the Limitation Act, but where the question of application of Section 14(2) of Limitation Act is concerned, the same is to be considered by the learned Labour Court or court below on the basis of averment made in the application, for which no separate application is required."*

Because as per the facts of present case the benefit u/s 14(2) of Limitation Act cannot be given even if it is not pleaded in the garb of principles of natural justice taking into consideration that the applicant due to legal advices engaged in litigation before wrong forum because as per the settled position of law as laid down by the Hon'ble Supreme Court while giving a benefit u/s 14(2) of Limitation Act there should be bonafide and diligence on the part of applicant which in the present case, prima facie does not exist.

However, looking into the facts and circumstances of the present case, specially that the applicant has been retrenched on 28.03.2006 and thereafter he was continuously engaged in litigation on the basis of legal advice given to him, as such, if he is so advised he may approach the appropriate forum for redressal of his grievances and it is expected from said authority to take steps immediately in the matte in question as per law.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, up to a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc. (***Hariprasad Vs. A.D. Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organisation also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take up an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

> "*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*
>
> Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No.24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

> *"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -*
>
> *"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*
>
> *(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*
>
> *(3) The application referred to in sub-Section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."*

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3).

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.*
>
> *20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:*
>
> > *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*
>
> *21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section (3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."*

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

> *"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.*
>
> *8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 along with the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 along with the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.*
>
> *The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.*

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is

an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9. It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Reverting to the facts of the present case, as per the admitted position, the services of the workman was retrenched on 28.03.2006 and the same has been challenged by him by filing the present industrial dispute on 24.03.2014 before this Tribunal

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his retrenchment, because his services were retrenched on 28.03.2006 and filed the present case on 24.03.2014 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3), liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947.

It is made clear that this Tribunal has not adjudication the present claim on merit; and workman may approach appropriate forum for redressal of his grievances.

Award as above.

LUCKNOW.

31st October, 2023

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण -सह - श्रम न्यायालय,** लखनऊ के पंचाट (पहचान संख्या **13/2014**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **11/06/2024** को प्राप्त हुआ था।

[सं.एल-22013/01/2024-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 13/2014*)* of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the Management of Food Corporation of India and their workmen, received by the Central Government on 11*/06/2024*

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 13/2014

BETWEEN

धर्मेन्द्र कुमार पुत्र मिठाईलाल निवासी-ग्राम-पुरैना, पोस्ट-कटया, जिला - बस्ती

AND

1. प्रबन्धक (डिपो), भारतीय खाद्य निगम, बस्ती

2. क्षेत्र प्रबन्धक, भारतीय खाद्य निगम, जिला कार्यालय, गोरखपुर

3. महाप्रबन्धक, उ०प्र०, भारतीय खाद्य निगम, क्षेत्रीय कार्यालय, टी.सी. /3वी., विभूति खण्ड, गोमती नगर, लखनऊ - 206010

4. कार्यकारी निदेशक भारतीय खाद्य निगम, आंचलिक कार्यालय (उत्तरी) 2ए, 2बी, सेक्टर-24, नोएडा - 201301

5. ठेकेदार - विनोद कुमार पाण्डेय, मैनेजर श्री स्टार सिक्योरिटी, बस्ती

AWARD

On 24.03.2014 the claimant/workman has filed the present industrial dispute as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act); along with application for condonation of delay.

Learned counsel for applicant while pressing application for condonation of delay submits as under:

Applicant was appointed as security guard in the FCI, Depot Basti through contractor no. 5, contractor, Vinod Kumar Pandey, Manager, Three Star Security, Basti and w.e.f. 28.03.2006 he was not allowed to work and discharge his duties.

Learned counsel for applicant further submits that thereafter as per legal advice, given to the applicant, he approached Regional Labour Commissioner (Central), Lucknow on 14.08.2013 against alleged illegal termination/retrenchment of his services for conciliation, which failed vide dated 16.12.2013.

Counsel for applicant further submits that after failure of conciliations, the present industrial dispute has been filed before this Tribunal. Accordingly, learned counsel for applicant submits that in view of the above said facts and in view of the law as laid down in the following cases:

(i) Hon'ble Allahabad High Court in case of Milkiya Singh & others vs. Additional Commissioner Lucknow Division & ors in Writ C No. 3000066 of 1992 decided on 12.05.2022.

(ii) Hon'ble Supreme court in case of M/s Laxmi Srinivasa R and P Boiled Rice Mill v. The State of Andhra Pradesh & Anr. 2023 (1) ICC 279.

(iii) Hon'ble Jharkhand High Court in case of Rajesh Kumar vs. The Central Coalfields Limited & others in W.P. (L) No. 311 of 2022 decided on 11.03.2022

Accordingly, he submits that delay in filing present industrial dispute may be condoned.

Miss Deepti Tripathi, learned counsel for respondent submits that as in the present case, aggrieved by the alleged impugned action by which the services of the applicant was retrenched, he has approached this Tribunal by invoking the provisions of Section 2A of the Act read with section 2A (3) of the Act, so, in view of provisions as provided in section 2A (3) of the Act, as period of limitation is three years i.e. fixed period of limitation, thus, taking into consideration the provisions of section 2A(3) of the Act, present claim petition filed by the applicant on 24.03.2014 allegedly aggrieved by the order of retrenchment dated 28.03.2006 is totally illegal and arbitrary and even otherwise no cause of action has occurred against the FCI in the present case, so workman is not entitled for any relief, case is liable to be dismissed, barred by limitation.

I have heard learned counsel for parties and gone through the record.

The first and foremost question to be decided in present case is whether the present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have carefully gone through the judgments cited by the applicant in *M/s Laxmi Srinivasa R and P Boiled Rice Mill (supra)* and from perusal of said judgments the position which emerged out that in all of said judgments the matter was under consideration that for condoning delay the provision u/s 14 of the Limitation Act, 1963 can be taken into consideration; however, in the present case in view of the facts and circumstances staged hereinabove, is concerned admittedly u/s 2A (3) of the Act, the period of limitation is three years so that is the fixed period limitation, as such, the benefit of section 14(2) of the Limitation Act cannot be accorded to the applicant. Further, in the case of *Rajesh Kumar (supra)* decided by Hon'ble Jharkhand High Court vide order dated 11.03.1973, the position which emerged out that applicant cannot be given any benefit because in the said matter Hon'ble High Court of Ranchi has held as under:

> *"In reply, learned counsel for the petitioner has submitted that such application is only required under Section 5 of the Limitation Act, but where the question of application of Section 14(2) of Limitation Act is concerned, the same is to be considered by the learned Labour Court or court below on the basis of averment made in the application, for which no separate application is required."*

Because as per the facts of present case the benefit u/s 14(2) of Limitation Act cannot be given even if it is not pleaded in the garb of principles of natural justice taking into consideration that the applicant due to legal advices engaged in litigation before wrong forum because as per the settled position of law as laid down by the Hon'ble Supreme Court while giving a benefit u/s 14(2) of Limitation Act there should be bonafide and diligence on the part of applicant which in the present case, prima facie does not exist.

However, looking into the facts and circumstances of the present case, specially that the applicant has been retrenched on 28.03.2006 and thereafter he was continuously engaged in litigation on the basis of legal advice given to him, as such, if he is so advised he may approach the appropriate forum for redressal of his grievances and it is expected from said authority to take steps immediately in the matte in question as per law.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, up to a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc. (***Hariprasad Vs. A.D. Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organisation also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take up an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No.24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3).

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section (3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 along with the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 along with the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".*

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9. It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Reverting to the facts of the present case, as per the admitted position, the services of the workman was retrenched on 28.03.2006 and the same has been challenged by him by filing the present industrial dispute on 24.03.2014 before this Tribunal

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his retrenchment, because his services were retrenched on 28.03.2006 and filed the present case on 24.03.2014 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3), liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947.

It is made clear that this Tribunal has not adjudication the present claim on merit; and workman may approach appropriate forum for redressal of his grievances.

Award as above.

LUCKNOW.
October, 2023.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण -. सह - श्रम न्यायालय**, लखनऊ के पंचाट (पहचान संख्या **14/2014**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **11/06/2024** को प्राप्त हुआ था।

[सं. एल.-22013/01/2024-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 14/2014*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 11***/06/2024***

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT

LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 14/2014

BETWEEN

बलिराम चौधरी पुत्र राम प्रसाद चौधरी निवासी-ग्राम-रिठिया, पोस्ट- महावीरपुर, जिला- बस्ती

AND

1. प्रबन्धक (डिपो), भारतीय खाद्य निगम, बस्ती

2. क्षेत्र प्रबन्धक, भारतीय खाद्य निगम, जिला कार्यालय, गोरखपुर

3. महाप्रबन्धक, उ०प्र०, भारतीय खाद्य निगम, क्षेत्रीय कार्यालय, टी.सी. /3वी., विभूति खण्ड, गोमती नगर, लखनऊ - 206010

4. कार्यकारी निदेशक भारतीय खाद्य निगम, आंचलिक कार्यालय (उत्तरी) 2ए, 2बी, सेक्टर-24, नोएडा - 201301

5. ठेकेदार - विनोद कुमार पाण्डेय, मैनेजर थ्री स्टार सिक्योरिटी, बस्ती

AWARD

On 24.03.2014 the claimant/workman has filed the present industrial dispute as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act); along with application for condonation of delay.

Learned counsel for applicant while pressing the application for condonation of delay submits as under:

(a) Applicant was appointed as security guard in the FCI, Depot Basti through contractor no. 5, contractor, Vinod Kumar Pandey, Manager, Three Star Security, Basti and w.e.f. 28.03.2006 he was not allowed to work and discharge his duties, so aggrieved by said facts the workman as per the legal advice given to him, approached Hon'ble High Court by filing a Writ Petition no. 4880/2006 Bali Ram Chaudhari vs UoI & others, which was dismissed by order dated 06.09.2006.

(b) Thereafter, the workman approached Labour Court, Gorakhpur for redressal of this grievances. Accordingly, before the Labour Court, Gorakhpur case was registered as adjudication no. 08/2006; however, the same was dismissed by order dated 23.10.2007, passed by Dy. Labour Commissioner, Gorakhpur on the ground that the same is not maintainable u/s 2A of the U.P. Industrial Disputes Act, 1947.

Learned counsel for applicant further submits that thereafter as per legal advice, given to the applicant, he approached the CAT, Allahabad by filing O.A. No. 365/2013 under Section 19 of CAT Act, 1985, which was dismissed by an order dated 01.04.2013.

Counsel for applicant further submits that after dismissal of O.A. No. 365/2013, the present industrial dispute has been filed before this Tribunal. Accordingly, learned counsel for applicant submits that in view of the above said facts and in view of the law as laid down in the following cases:

(i) Hon'ble Allahabad High Court in cae of Milkiya Singh & others vs. Additional Commissioner Lucknow Division & ors in Writ C No. 3000066 of 1992 decided on 12.05.2022.

(ii) Hon'ble Supreme court in case of M/s Laxmi Srinivasa R and P Boiled Rice Mill v. The State of Andhra Pradesh & Anr. 2023 (1) ICC 279.

(iii) Hon'ble Jharkhand High Court in case of Rajesh Kumar vs. The Central Coalfields Limited & others in W.P. (L) No. 311 of 2022 decided on 11.03.2022

The delay in filing present industrial dispute may be condoned.

Miss Deepti Tripathi, submits that as in the present case, aggrieved by the alleged impugned action by which the services of the applicant was retrenched, he has approached this Tribunal by invoking the provisions of Section 2A of the Act read with section 2A (3) of the Act, so, in view of provisions as provided in section 2A (3) of the Act, as period of limitation is three years i.e. fixed period of limitation, thus, taking into consideration the provisions of section 2A(3) of the Act, present claim petition filed by the applicant on 24.03.2014 allegedly aggrieved by the order of retrenchment dated 28.03.2006 is totally illegal and arbitrary and even otherwise no cause of action has occurred against the FCI in the present case.

I have heard learned counsel for parties and gone through the record.

The first and foremost question to be decided in present case is whether the present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have carefully gone through the judgments cited by the applicant in *M/s Laxmi Srinivasa R and P Boiled Rice Mill (supra)* and from perusal of said judgments the position which emerged out that in all of said judgments the matter was under consideration that for condoning delay the provision u/s 14 of the Limitation Act, 1963 can be taken into consideration; however, in the present case in view of the facts and circumstances staged hereinabove, is concerned admittedly u/s 2A (3) of the Act, the period of limitation is three years so that is the fixed period limitation, as such, the benefit of section 14(2) of the Limitation Act cannot be accorded to the applicant. Further, in the case of *Rajesh Kumar (supra)* decided by Hon'ble Jharkhand High Court vide order dated 11.03.1973, the position which emerged out that applicant cannot be given any benefit because in the said matter Hon'ble High Court of Ranchi has held as under:

> *"In reply, learned counsel for the petitioner has submitted that such application is only required under Section 5 of the Limitation Act, but where the question of application of Section 14(2) of Limitation Act is concerned, the same is to be considered by the learned Labour Court or court below on the basis of averment made in the application, for which no separate application is required."*

Because as per the facts of present case the benefit u/s 14(2) of Limitation Act cannot be given even if it is not pleaded in the garb of principles of natural justice taking into consideration that the applicant due to legal advices engaged in litigation before wrong forum because as per the settled position of law as laid down by the Hon'ble Supreme Court while giving a benefit u/s 14(2) of Limitation Act there should be bonafide and diligence on the part of applicant which in the present case, prima facie does not exist.

However, looking into the facts and circumstances of the present case, specially that the applicant has been retrenched on 28.03.2006 and thereafter he was continuously engaged in litigation on the basis of legal advice given to him, as

such, if he is so advised he may approach the appropriate forum for redressal of his grievances and it is expected from said authority to take steps immediately in the matte in question as per law.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, up to a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair retrun to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organisation also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take u[an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

> "*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*
>
> Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No.24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3).

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9. It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Reverting to the facts of the present case, as per the admitted position, the services of the workman was retrenched on 28.03.2006 and the same has been challenged by him by filing the present industrial dispute on 24.03.2014 before this Tribunal

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his retrenchment, because his services were retrenched on 28.03.2006 and filed the present case on 24.03.2014 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3), liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947.

It is made clear that this Tribunal has not adjudication the present claim on merit; and workman may approach appropriate forum for redressal of his grievances.

Award as above.

LUCKNOW.

27th October, 2023.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1222.—औद्योगिक ववाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकर -सह -श्रम न्यायालय**, लखनऊ के पंचाट (पहचान संख्या **78/2012**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **11/06/2024** को प्राप्त हुआ था।

[सं. एल.-22013/01/2024-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 78/2012*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 11***/06/2024.***

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 78/2012

BETWEEN

Kedar Prasad Kushwaha through Rajendra Pal,

Advocate, 82/23C, Guru Govind Singh Marg,

Lalkuan, Lucknow,

…… Workman

AND

(1) The General Manager Food Corporation of India,
V-Vibhuti Khand, Gomti Nagar, Lucknow (UP)

(2) Area Manager, Food Corporation of India, Civil Line, Faizabad

(3) Manager (Depo) Depo Officer
FCI, Gaddoopur Depo,
Faizabad

……. Respondent

AWARD

On 10.09.2012 claimant Kedar Prasad Kushwaha filed claim petition under section 2-A of the Industrial Dispute Act, (hereinafter referred as Act) relevant paragraph of the claim statement 1,2,3,4,5,9,10,12, held as under:-

(1) यह कि भारतीय खाद्य निगम, गद्दोपुर डिपो, फैजाबाद (प्रतिवादी सख्यां–3) द्वारा प्रार्थी को दिनांक 28.08.2008 से बगैर किसी प्रकार की लिखित सूचना/जानकारी दिये हुए, अनियमित व मनमाने तरीके से गद्दोपुर डिपो, फैजाबाद से प्रार्थी को निर्धारित किये लोडिंग/अनलोंडिग आदि के कार्य को करने से मना कर दिया गया है तथा मौखिक रूप से गद्दोपुर डिपो, फैजाबाद के मुख्य द्वार पर नियुक्त सुरक्षा प्रभारी को निर्देशित कर दिया गया है कि केदार प्रसाद कुशवाहा (वादी) को डिपो प्रांगण के कदपि प्रवेश न करने दिया जाये।

(2) यह कि इस क्रम में कुछ महत्वपूर्ण तथ्य भी माननीय पीठासीन अधिकारी के समक्ष न्यायहित में प्रस्तुत कर रहा हूँ।

(3) यह कि प्रार्थी को एफ0सी0आई0 वर्कर्स यूनियन व भारतीय खाद्य निगम के प्रबन्ध पक्ष के मध्य भारतीय खाद्य निगम के मुख्यालय नई दिल्ली में दिनांक 04–4–1995 को औ0वि0अधि0 1947 की धारा–19(1) व औ0वि0अधि0 (केन्द्रीय रूल्स) 1957 को रूल 58 के अन्तर्गत एक समझौता हुआ था।

(4) यह कि दिनांक 04.07.1995 के समझौते के अन्तर्गत उत्तर प्रदेश राज्य में स्थित लगभग 10 डिपो से ठेकेदारी प्रथा को समाप्त करके डायरेक्त पेमेन्ट की दृष्टि से छव ूवता दव चंल ैलेजमउ को भारतीय खाद्य निगम के गद्दोपुर डिपो, फैजाबाद में प्रारम्भ किया गया था। उक्त 10 डिपो मे डिपो गद्दोपुर, फैजाबाद का नाम भी सम्मिलित था।

(5) यह कि दिनांक 04.07.1995 के समझौते की प्रतिलिपियाँ माननीय श्रम न्यायालय मंत्रालय के अधिकारियों को भी सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित की गई थी।

अ– सहायक श्रमायुक्त (केन्द्रीय), नई दिल्ली।

ब– क्षेत्रीय श्रमायुक्त (केन्द्रीय), नई दिल्ली।

स– मुख्य श्रमायुक्त (केन्द्रीय), नई दिल्ली।

द– सचिव, भारत सरकार, श्रम मंत्रालय, नई दिल्ली।

(6) यह कि प्रार्थी को अचानक दिनांक 28.08.2008 से बगैर कोई कारण बताये हुये अवैध व अनियमित तरीके से श्रम कानूनों (औ0वि0अधि0 1947 की धारा–2ए) की अनदेखी करते हुए भारतीय खाद्य निगम के गद्दोपुर करते हुए भारतीय खाद्य निगम के गद्दोपुर डिपो, फैजाबाद हैण्डलिंग लेबर पद के कार्य को करने से प्रतिवादी संख्या–3 द्वारा मौखिक रोक लगा दिया गया है और डिपो प्रागंण में प्रेवेश वर्जित कर दिया गया है।

(7) यह कि प्रार्थी को गैरकानूनी तरीके से विभाग के कार्य को करने से मौखिक मनाही करके डिपो प्रांगण में प्रवेश पर लगाये गये रोक को हटाने हेतु प्रार्थी ने अनेको प्रतिवेदन प्रतिवादीगणों को पत्र दिनांक 30.08.2008, 12.09.2008, 08/09–7–2009, 08.12.2009, 07.07.2010, 09.12.2010, 10.08.2011, 08.12.2011, 11/13.1.2012, 03.03.2012, 03/6.03.2012 को तथा अनेको पत्र स्पीड पोस्ट से प्रतिवादीगणों को भेजे गये है किन्तु प्रतिवादीगणों द्वारा प्रार्थी के किसी भी पत्र को कोई उत्तर नहीं दिया गया है।

(8) यह कि हताश होकर प्रार्थी ने माननीय क्षेत्रीय श्रमायुक्त (केन्द्रीय) अलीगंज, लखनऊ के यहां उपर्युक्त प्रकरण समबन्धी शिकायती पत्र दिनांक 11.04.2012 को औ0वि0अधि0 1947 की धारा–2ए, 25एफ व 25एच के अन्तर्गत प्रस्तुत किया था। जहां पर माननीय क्षेत्रीय श्रमायुक्त के द्वारा उभय पक्षों को नोटिस संख्या–लख0–8 (2–15)/2012 दिनांक 30.04.2012 जारी किया गया था।

प्रार्थना

अतएव माननीय केन्द्रीय सरकार औद्योगिक अधिकरण व श्रम न्यायालय, लखनऊ से प्रार्थना है कि प्रार्थी को न्यायहित में निम्नलिखित रिलीफ दिलाने की कृपा करें:–

अ– प्रार्थी को दिनांक 28.08.2008 से ड्यूटी पर लेने हेतु प्रतिवादी स0–2 व 3 को आवश्यक आदेश देने की कृपा करें।

ब– प्रार्थी को दिनांक 28.08.2008 से रोके गये वेतन का भुगतान करने हेतु आवश्यक निर्देश प्रतिवादियों को देने की कृपा करें।

स– प्रार्थी को ड्यूटी पर बहाल करके उसको देय अन्य समस्त लब्बित भुगतान प्रतिवादी सं0–2 व 3 से कराना सुनिश्चित करें।

द– डिपो प्रांगण में प्रवेश के समय श्रमिकों की उपस्थिति/हस्ताक्षर मुख्य द्वार पर मुख्यालय, नई दिल्ली के आदेशानुसार कराना सुनिश्चित किया जाये।

य– श्रमिको का भुगतान चेक द्वारा कराया जाये ताकि मेटो की कमेटी की मनमानी पर अंकुश लगाया जा सकें।

Thereafter the documents have been exchanged between the parties.

Today the matter was taken up in the revised cause list.

None appeared on behalf of claimant.

Sri W.A. Khan learned counsel appeared on behalf of respondent submitted as under:-

That the present industrial dispute has been raised by the claimant after an inordinate delay of 4 years from the date of his alleged termination i.e. 28.08.2008 which is beyond the period prescribed for agitating the cause of action, under provisions of section 2A (3) of the Industrial Disputes Act, 1947, hence this Hon'ble Tribunal has no jurisdiction to take cognizance thereof. That the Industrial Disputes Act, 1947 and the Rules framed there under are complete code in itself which contain the mandatory provisions prescribed for empowering any cause before the expiry of three years from the date of discharge dismissal, retrenchment or otherwise termination of service as specified in Sub-section (1) of Section 2A of the Industrial Disputes Act, 1947, it is specifically stated that this enactment has not conferred any jurisdiction or powers to condone any delay by any of the authority including this Hon'ble Tribunal, appointed and constituted under Act.

In these circumstances the above noted claim may kindly be rejected with heavy costs.

Accordingly he requested that the present case filed by claimant is liable to be dismissed on the ground of limitation as per section 2-A(3) of the I.D. Act.

I have heard learned counsel Sri W.A. Khan and going through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but

a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 10.09.2012, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act

and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 28.08.2008, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was

introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and position of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266,***

Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided"*.

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*
>
> *(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)*

Reverting to the facts of the present case, as per admitted position as the services of the workman was terminated on 28.08.2008, challenged by him by filing the present industrial dispute on 10.09.2012, so the same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act 1947.

In view of the above said facts present claim statement filed by the claimant is barred by period of limitation i.e. beyond 3 years as provided under section 2-A(3) of the Act, so same is dismissed on the ground of limitation.

Award as above.

Lucknow. Justice ANIL KUMAR, Presiding Officer

13.02.2024

नई दिल्ली, 18 जून, 2024

का.आ. 1223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण -. सह - श्रम न्यायालय**, लखनऊ के पंचाट (पहचान संख्या **59/2020)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **11/06/2024** को प्राप्त हुआ था।

[सं. एल.- 22013/01/2024-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 59/2020*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 11***/06/2024.***

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 59/2020

Ref. No. D-844/AB/2020/36/IR/DDN

Bajaj Ahmad Vs. FCI

BETWEEN

Sri Bajaj Ahmad S/o Sri Rauf Ahmad

Village and Post- Virampur, Tehsil- Mitauli,

District- Lakhimpur-Kheri (U.P.)

…… Workman

AND

(1) The General Manager (Principal Employer)

Food Corporation of India,

Regional Office, T.C.3, V-Vibhuti Khand, Gomti Nagar, Lucknow (UP)

(2) The Regional Manager (Appointing Authority)

Food Corporation of India (FCI),

District, Office, Shahjahanpur (U.P.)

(3) Sri Rajendra Saxena (Representative)

M/s Keshav Singh and Ors. T.P. No. 315. Katia Tolla,

Shahajanpur (U.P.)

……. Respondent

AWARD

By letter/order dated 09.09.2020 the following reference has been referred to this Tribunal for adjudication.

"*Whether the termination of the service of Sri Bajaj Ahmad S/o Sri Rauf Ahmad, who was engaged in Roja Depot of FCI, Shahajanpur, (UP) by M/s Keshav Singh, Contractor of FCI, for the period 03.08.2008 to 23.04.2010 is proper and justified".*

If not, to what relief, the workman is entitled to?"

From the perusal of the record the position which emerged out that on 21.10.2023 notice was issued to the workman to file statement of claim along with witness and documents.

Thereafter on the following dates i.e. on 01.01.2021, 08.11.2021, 07.03.2021, 20.05.2022, 12.8.2022, 26.10.2022, 11.01.2023 time was granted to file statement of claim by claimant however the same was not filed.

11.01.2023

Matter taken up revised list.

Parties absent.

Last opportunity is granted for CS.

List on 21.03.2023.

On 21.03.2023 an order was passed quoted herein below:-

Matter taken up in revised list.

Sri Neeraj Singh holding brief Sri Dhirendra Singh for FCI.

None for claimant.

In spite of last opportunity, claim statement is not filed, accordingly opportunity for statement of claim is closed.

List on 13.03.2023 for ex-parte hearing.

On **08.08.2023** was passed held as under:-

Matter taken up in revised list.

Sri Dhirendra Sing For FCI.

None for claimant.

List on 03.11.2023 for ex-parte haring. Notice to clamant.

Today when the matter was taken up in the revised cause list neither the workman nor any legal representative appeared also till date no statement of claimant has been filed.

Accordingly after hearing Sri Dhirendra Singh learned counsel for the respondent and going through the record, taking into consideration the facts, stated here and above that in spite of due opportunity statement of claim has not been filed by claimant.

So taking into consideration the said facts and the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workmen/claimant has filed any statement of claim, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; the workman is not entitled for any relief.

Award as above.

Lucknow. Justice ANIL KUMAR**,** Presiding Officer

Date 08.02.2024

नई दिल्ली, 18 जून, 2024

का.आ. 1224.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (83/2015) प्रकाशित करती है।

[सं. एल- 12012/72/2015- आई आर (बी–I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.83/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/72/2015-IR (B-I)

SALON, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/83/2015

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Mukesh Sarjele,

S/o Narayan Sarjele,

Behind Shankargarh P.O. Makronia,

Distt. Sagar (M.P.)

Workman

Versus

The Regional Manager,
State Bank of India,
Shop No.9, 10 & 13-18, Dwarika
Civil Lines, Sagar (M.P.)
The Branch Manager,
State Bank of India, Gujrati Bazar Branch,
Sagar Distt. Sagar (M.P.)
The Chief Manager(GB),
State Bank of India, Zonal Office,
Local Head Office Building, Hoshangabad Road,
Bhopal (M.P.)

Management

A W A R D

(Passed on this 10th day of April-2024.)

As per letter dated 04/09/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-12012/72/2015 - (IR(B-I)) dt. 04/09/2015. The dispute under reference related to :-

"Whether the action of the management of Regional Manager, State Bank of India, Civil Lines, Sagar (MP)/Branch Manager, State Bank of India, Gujrati Bazar Branch, Sagar/Chief Genral Manager, State Bank of India, Local Head Office, Bhopal (MP) in discontinuing the services of Shri Mukesh Sarjesh S/o Narayan Sarjele Ex-Peon on daily rated w.e.f. September, 2010 and not absorbing him into State Bank of India from State Bank of Indore pursuant to the merging of State Bank of Indore into State Bank of India is just valid and reasonable? If not, what relief the workman is entitled to and from which date?"

After registering the case on reference received, notices were sent to the parties and were duly served on them. Both the sides appeared and filed their respective Statements of Claim and Defense.

According to the workman, he was engaged as a daily casual worker by management and worked from 1997 till August 2010 continuously. He was terminated by management without any notice or compensation which is against law. He has sort the relief of his reinstatement with all back wages and benefits.

Case of management is that he was a daily wager engaged as and when required and not a regular worker, never completed 240 days in any year.

The workman never filed any evidence in this Tribunal. Management also did not file any evidence.

I have perused the records; reference is itself the issue for determination. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 10/04/2024

नई दिल्ली, 18 जून, 2024

का.आ. 1225.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (45/2018) प्रकाशित करती

[सं. एल - 12011/16/2018- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.45/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/16/2018-IR (B-I)

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/45/2018

Present: P.K.Srivastava

H.J.S..(Retd)

The General Secretary,

Dainik Vetan Bhogi Bank Karmchari Sangathan,

F-1, Tripti Vihar, Opp. Engg. College,

Ujjain (M.P.) - 456001

Workman

Versus

The Chief General Manager,

State Bank of India,

Hosangabad Road,

Bhopal (M.P.) – 462004

Management

A W A R D

(Passed on this 10th day of April-2024.)

As per letter dated 22/10/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/16/2018 - (IR(B-I)) dt. 22/10/2018. The dispute under reference related to :-

"1. Whether Shri Virendra Narvale is a workman as defined under ID Act.

2. Whether the termination of Shri Virendra Narvale w.e.f. 16.08.2012 (working since 20.07.2000) by the management of State Bank of India, Bhopal is legal and justified? If not, what relief he is entitled to and to what extent? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Both the sides appeared and filed their respective Statements of Claim and Defense.

According to the workman, he was engaged as a daily casual worker by management and worked from 20.07.2000 till 16.08.2012 continuously. He was terminated by management without any notice or compensation which is against law. He has sort the relief of his reinstatement with all back wages and benefits.

Case of management is that he was a daily wager engaged as and when required and not a regular worker, never completed 240 days in any year.

In evidence, though the workman filed photocopied document, he never cared to prove them; no evidence adduced by workman. Management also did not filed any evidence at argument stage.

Non appeared for workman. Heard Learned Counsel for management Shri Vijay Tripathi, perused record, reference is the issue for determination.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 10/04/2024

नई दिल्ली, 18 जून, 2024

का.आ. 1226.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **पश्चिम रेलव** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (90/2014) प्रकाशित करती है।

[सं. एल.- 41012/29/2014- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.90/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen.

[No. L-41012/29/2014-IR (B-I)]

SALON, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/90/2014

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Ramsahay

S/o. Shri Girdhari Lal

R/o. Khiriya Ward, Behind Police Thana,

Infront of Putri Shaala, Beena, Sagar (MP)

Workman

Versus

The General Manager

Western Railway,

Churchgate, Mumbai - 400020

Management

(J U D G EM E N T)

(Passed on this 4th day of April 2024)

As per letter dated 21/11/2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-41012/29/2014 IR(B-I) dt. 21/11/2014. The dispute under reference relates to:

"Whether the action of management of General Manager Western Railway Mumbai in terminating the services of workman Shri Ramsahay S/o. Shri Girdhari Lal w.e.f. 17.06.1990 is justified ? If not, to what relief the workman is entitled to ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and file their respective Statement of Claims and Defense.

The case of the workman is mainly that he had been working in the railways since 19.03.1977. In the year 1983, he got MRCL (Muster Roll Casual Labour) status. He was transferred in 1988 to Vidisha from Beena Workshop and from Beena to Bhopal. He was issued a charge sheet and without conducting a proper enquiry his services were terminated by management on the allegation that he had secured appointment by producing a false service card. He filed a petition before the Central Administrative Tribunal Jabalpur which was O.A. No.- 293/1991. This petition was finally decided on 02.04.1996. His termination order was quashed by The Central Administrative Tribunal Jabalpur Bench and matter was remanded to the management for conducting a proper enquiry. The management conducted enquiry which was contrary to principle of natural justice and after issuing a show cause the punishment order dt. 17.06.1990 was passed by management. An appeal against this order was dismissed by the Appellate Authority. According to the workman the Enquiry Officer wrongly concluded the charges proved and the Disciplinary Authority as well the Appellate Authority also acted arbitrarily in concurring with the findings of the Enquiry Officer and committed illegality in passing the impugned termination order. The workman has thus prayed that setting aside the termination order dated 17.06.1990, he be reinstated with all back wages and benefits.

The case of management is mainly that firstly, the claim is barred by delay and latches on the part of the workman in raising the dispute. Management has further rebutted the allegation of the workman and has stated that the impugned order was passed after conducting a departmental enquiry as per law. The finding of the Enquiry Officer is based on evidence on record and there is no illegality in the findings recorded and also that the punishment is not disproportionate to the charge.

Following issues were framed on the basis of pleadings :-

1. *Whether the departmental enquiry conducted is legal and proper ?*
2. *Whether the charges are proved from the enquiry ?*
3. *Whether punishment is disproportionate to the charges ?*
4. *Whether the workman is entitled to any relief ?*

Issue No.-1 was taken as preliminary issue and has been decided vide order dated 15.03.2022. The departmental enquiry has been held legal and proper.

Parties were given opportunity to lead evidence on remaining issues. No evidence was adduced by any of the parties on remaining issues.

I have heard argument of learned Counsel Shri Arun Patel for workman. Management did not prefer any oral argument, they filed written argument. The workman side has also filed written argument. I have gone through the written arguments from both the sides as well the record of the case.

Issue No.-2

As it is evident from the original enquiry papers that the charge against the workman was as follows-

"रेलवे नियमों के अनुसार आकस्मिक मजदूरों का रेल विभाग द्वारा प्रेस में छपे नंबर्ड कैजुअल लेबर सर्विस कार्ड दिए जाते हैं। श्री रामसहाय गिरधारी ने कहीं से जाली कार्ड जो कि रेलवे द्वारा नहीं दिया गया है प्राप्त कर रेलवे में कार्य करने की प्रविष्टि 19.03.1977 से 18.07.1977, 24.07.1977 से 18.11.1977 और 21.11.

1977 से 18.02.1978 दर्शाते हुए रेल पथ निरीक्षक कोसीकला की सील तथा हस्ताक्षर बनाकर नौकरी प्राप्त की और उसी आधार पर एम.आर.सी.एल. का स्टेटस प्राप्त किया। रेल पथ निरीक्षक कोसीकला से पता पूछने पर ज्ञात हुआ है कि श्री रामसहाय गिरधारी ने किसी भी पद पर उनके अधीन कार्य नहीं किया और न ही उनके द्वारा सर्विस कार्ड नंबर 129000 जारी किया गया है। इस प्रकार रेलवे प्रशासन के साथ धोखाधड़ी की।''

प्रलेखों की सूची जिनके द्वारा श्री रामसहाय गिरधारी एम.आर.सी.एल. के विरूद्ध आरोप के अनुच्छेद संधृत करने का प्रस्ताव है:–

1. रेल पथ निरीक्षक कोसीकला पत्र संख्या ज़ैल्ब्ैम्द्22 दिनांकित 26.05.1986''

The management witness M.K. Shrivastava who was the enquiry officer, has filed his affidavit as his examination in chief and has proved the enquiry proceedings 34 page in his cross examination, he states that where this card was printed he does not know, entry is made in the relevant register while issuing the card. This registered was never produced before him, only a letter was received during the enquiry from the department stating that no such service card was issued by department. He further states that he had sent a letter dated 11.08.1989 to PWI (Permanent Way Inspector) to appear in the enquiry on 28.08.1989 alongwith concerned documents. He did not appear and sent only a letter which was taken in the enquiry. His statement was not recorded during the enquiry.

There is certified copy of order of Central Administrative Tribunal dated 07.05.1991 passed in O.A. No.-223/1991, in which direction was given to the appellate authority to decide the appeal filed by the workman applicant within two months from the date of communication of the order to him. Though the workman has alleged that he filed O.A. No.-293/1991 before Central Administrative Tribunal Jabalpur which was decided on 02.04.1996 quashing the order of termination and remanding the matter back to the department for conducting a proper enquiry but there is no such order on record. Management has denied any such order passed by Central Administrative Tribunal in O.A. No.-293/1991. Hence, burden to prove this fact is on the workman. By not filing any certified copy of the petition of OA No.-293/1991 or any order as stated by workman he has failed to discharge this burden.

From the perusal of enquiry records it comes out that the basis of the charge is letter of the PWI who had issued a letter that the Casual Labour Service Card No.- 129000 is not issued by him and is fake. This letter is on record. The witness who has prepared this letter never appeared during the enquiry to prove the contents of the letter no other witness was examined during the enquiry to prove this letter. This letter is the only piece of evidence in support of charge as has been stated in the charge sheet itself. Now the question arising whether the enquiry officer committed any error in law in relying on this letter which was not proved as per law and the recording is finding that the charge was proved.

In the cases of ***Roop Singh Negi Vs Punjab National Bank & Others, (2009) 2 SCC 570 (paras 14, 15 & 23) and Naresh Singh Vs State of UP & Others, 2013 (1) ESC 429 (Allahabad)(DB)(LB)(para 43),*** *it has been held by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that in the departmental enquiry, mere production of documents is not enough. The contents of the documentary evidence has to be proved by examining witnesses. In the absence of examination of any such witness in support of the contents of the documents relied on by the enquiry officer in support of the charges leveled against the delinquent, the contents of the said documents as mentioned in the charges and the enquiry report dated 23.12.2006 cannot be said to have been proved as per the requirement of law and, therefore, the findings recorded by the enquiry officer against the delinquent on the basis of those documents are not sustainable.*

In its judgment in the case of ***United Bank of India vs Biswanath Bhattacharjee, 2021 LiveLaw (SC) 109,*** *Hon'ble The Apex Court laid following principles when courts can interfere with the findings of facts recorded in the enquiry reports under any of the following conditions:*

(i) When finding of fact in the enquiry report is beyond record i.e. based on no evidence

(ii) when finding of fact is based on any irrelevant or extraneous factors

(iii) when finding of fact has been recorded by ignoring material evidence

(iv) when finding of fact appears to be mala-fide

(v) *when finding of fact is perverse*

Hence, in the light of aforesaid principle of law, the finding of the Enquiry Officer is held to be vitiated in law. Consequently, the action of the Disciplinary Authority in accepting the finding of Enquiry Officer is also held vitiated in law. The charge against the workman is held not proved.

Issue No.-2 is answered accordingly.

Issue No.-3 :-

In the light of findings recorded on issue no.-2, the impugned punishment passed by The Disciplinary Authority and affirmed by Appellate Authority is held vitiated in law and is liable to be set aside. Issue no.-3 is answered accordingly.

Issue No.-4 :-

Management has opposed the relief on the ground of delay and latches. The Industrial Disputes Act 1947 nowhere provides any limitation for any relief to be sought. Atleast this fact is established that the workman did agitate against his termination before Central Administrative Tribunal. It is true that he raised this dispute after along gap of time. The question arises is whether he be refused justice only on the ground of delay when there is no limitation provided in the Act itself and the action of management has been found grossly illegal. Answer to this question in my view is a big NO. An illegality cannot be allowed to perpetuate to the prejudice of a workman only on technical grounds. Many of litigants who are not fortunate enough to get proper legal advice and legal assistance due to their poverty and ignorance. After all to get justice is a basic human right, howsoever delayed it is.

Accordingly, the workman is held entitled to be reinstated but without back wages and is further held entitled to all the other in service benefits till date of his retirement and post retiral benefits admissible to him as per rules governing his service. Issue no.-4 is answered accordingly.

In the light of above discussion and findings, the reference deserves to be answered as follows-

A W A R D

Holding the action of management of General Manager, Western Railway Mumbai in terminating the services of the workman Shri Ramsahay S/o. Girdhari Lal, w.e.f. 17.06.1990 unjustified and against law, he is held entitled to be reinstated but without back wages and is further held entitled to all the other in service benefits till date of his retirement, deeming him to be in continuous service and also to post retiral benefits admissible to him as per rules governing his service. No order as to cost.

DATE:- 04/04/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1227.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (10/2015) प्रकाशित करती

[सं. एल - 12025/01/2024- आई आर (बी-I) -163]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.10/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2024-IR (B-I)-163]

SALON, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/10/2015

Present: P.K.Srivastava

H.J.S..(Retd)

Mrs. Madhu Narwani,

Daily Wager Messenger State Bank of India,

Dist. Neemuch Branch Code No. 10215

Via: The General Secretary,

Daily Wages Bank Employees Organization,

F-1, Trupti Vihar, Ujjain (M.P.)

Workman

Versus

The Assistant General Manager,
Region-7 State Bank of India,
Regional Business Office,
Mhow- Neemuch Road, Mandsaur (M.P.)
The Branch Manager,
State Bank of India,
Branch Neemuch (10251) (M.P.)

Management

(J U D G E M E N T)

(Passed on this 22nd day of April 2024)

The workman has filed this petition Under Section 2-A (2 & 3) of the Industrial Disputes Act, hereinafter, referred to by the word 'Act' seeking the relief of his reinstatement with all back wages and benefits setting aside the punishment of his dismissal from service passed by the management.

Case of the workman is mainly that, He was appointed by the Branch Manager in November 2008 and discharged, all works of Peon/ Messenger till March 07, 2015 when he was terminated under an, on oral order of the Manager without any prior notice or compensation which is bad in Law. He has sought his reinstatement with back wages and benefits.

Management had denied her allegation with a case that, the workman was a daily wager, engaged on daily basis as and when required. He never completed 240 days in continues service.

No evidence was ever produced by any of the parties in this Tribunal. No affidavit was filed by any of the parties at stage of proceeding.

The Initial burden to prove his claim is on the workman. Since the workman did not file any evidence, in the absence of any evidence in support of holding the claim of workman not proved the petition deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the petition deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE:- 22/04/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1228.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (04/2013) प्रकाशित करती है।

[सं. एल.- 12025/01/2024- आई आर (बी-I)-164]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.04/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2024-IR (B-I) -164]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/04/2013

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Govind Kanungo
S/o. Poonam Chand Kanungo
R/o. 17, Vivekanand Colony
Barwah (MP)

Workman

Versus

The General Manager
State Bank of India
Bhopal (MP)

Management

(J U D G E M E N T)

(Passed on this 8th day of April 2024)

The workman has filed this petition U/S. 2-A (2 & 3) of the Industrial Disputes Act, hereinafter, referred to by the word 'Act' seeking the relief of his reinstatement with all back wages and benefits setting aside the punishment of his dismissal from service passed by the management on 12.05.2011.

According to the workman, he was first appointed as a Peon on 12.09.1975 and was promoted as Clerk on 01.12.2008, he was posted as a Head Cashier in the Karhi Branch of the Bank. He was sent by the Branch Manager to collect Rs. 50,00,000/- Lack cash remittance from Maheshwar Branch of the Bank on 05.04.2010. He proceeded at 1200 hours from the Bank and came back at 4.30 pm with the cash remittance. He left the bank thereafter and when came back in the branch on the next date he was asked to handover the charge to Shri Devendra Sharma. He was made the sign the charge handover on 05.04.2010. It is further his case he had proceeded to collect the cash remittance on 05.04.2010 without formally handing over charge of the cash, only by handing over the keys of the cash box to the Dy. Manager and taking advantage of this, he was charged with shortage of Rs. 115000/- in the cash and was forced to sign letter accepting his responsibility. He was suspended for the charge. A charge sheet was issued against him by the management. He was forced to sign letter admitting that in fact he had taken this amount of Rs. 115000/- and without conducting a just and proper enquiry, the Enquiry Officer submitted his enquiry report holding him guilty of the charge. The Disciplinary Authority passed the impugned order of punishment ignore his representation on the enquiry report and ignoring the fact that he had unblemished service record, hence the punishment was excessive and disproportionate to the charge.

In its written statement of Defense, management has taken a case that while the applicant was working as Special Assistant in Karhi Branch on 05.04.2010, Rs. 115000/- was found short in cash. This fact was informed to Police by the Branch Manager. The applicant workman accepted in writing and under his signature that he himself had taken this amount from the cash box. He further filed an application/ letter to the Branch Manager on 06.04.2010 wherein he again accepted that he had taken this money to meet out his personal need. This incident was reported to the Assistant General Manager by the Branch Manager. The workman was suspended on 07.04.2010. He was issued a charge sheet dated 18.08.2010 leveling the charge of gross misconduct as per point no.-5 (GHA) of Bank circular PER 29/02 dt. 23.08.2002. After receiving charge sheet, the workman submitted his reply dt. 27.08.2010 admitting the misconduct and begging excuse. Management decided to conduct regular enquiry and Enquiry Officer as well Presenting Officer were appointed. During the enquiry also, firstly he denied the charges and then management was asked to lead its evidence. After management led evidence, he again file a letter dt. 22.12.2010 admitting the misconduct. The Enquiry Officer submitted his report on 15.01.2011 holding the workman guilty of the misconduct. The Disciplinary Authority issued a show cause notice to him against the enquiry report and proposed punishment. The workman again admitted the misconduct in his reply and promised not to repeat in future. The Disciplinary Authority awarded the punishment of Dismissal from Service vide order dated 15.05.2011. The Appellate Authority dismissed the appeal on 09.12.2011 by a speaking order. According to management the enquiry was conducted as per rules, charges were proved, the workman admitted the misconduct at every stage hence charges were rightly held proved and punishment is also not disproportionate to the charges. Accordingly, management has prayed that the petition be dismissed.

Following issues were framed by my learned Predecessor vide order dt. 28.04.2015 :-

1. ***Whether departmental enquiry conducted against workman is proper and legal ?***
2. ***Whether charges imposed against workman are proved from the evidence in the enquiry ?***
3. ***Whether the punishment is legal ?***
4. ***What relief the workman is entitled ?***

Issue no.-1 was taken as preliminary issue. The workman filed his affidavit as his examination in chief. He was cross examined by management. Management examined its witness and proved enquiry papers Ex. M/1 to Ex. M/19.

On the basis of the evidence on record, preliminary issue was decided by my learned Predecessor vide order dated 23.06.2016 holding the departmental enquiry legal and proper. This order is part of this award.

Parties were given opportunity to lead evidence on remaining issues. No evidence was given by any of the parties.

At the stage of argument, learned Counsel Shri Arun Patel appeared for the workman, his argument were heard. Argument of learned Counsel for Bank Shri Vijay Tripathi were heard by me and the record has also been perused. Both the parties have filed written arguments which is the part of record. I have gone through the written arguments as well.

Issue No.-2:-

It comes out from perusal of enquiry papers during enquiry, that the workman has filed letter before the Enquiry Officer during the enquiry proceedings admitting the misconduct. As has been mentioned earlier, the workman has been consistently admitting his guilt right from day one and has filed letter to the management in this respect. Further more, management has examined its witness, who has proved the documents.

The settled law is that the standard of proof required to prove a charge during departmental enquiry and in criminal trial is different. In the former, charge is to be proved to the extent of preponderance whereas in the later, charge is to be proved beyond reasonable doubt.

Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. Ref. ***T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255***

Standard of proof in a departmental enquiry which is quasicriminal/quasi-judicial in nature: Disciplinary proceedings, however, being quasi-criminal in nature, ***there should be some evidence to prove the charge.*** *Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasijudicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Ref:* ***(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 (paras 10 , 11, 12 & 13). (ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 (Para 25)***

In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, *it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."*

In the case of ***T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255****, it has been held by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.*

In the cases of ***Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425****, the*

distinction between departmental enquiry and criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "

IN ***Judgment dated 20.05.2022 of the Supreme Court in Civil Appeal No. 3490/2022, State Bank of India Vs. K.S. Vishwanath. (ii) Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jaya Bhay, 2022 LiveLaw (SC) 3*** *it has been held that acquittal in criminal trial has no bearing or relevance on disciplinary proceeding as the standard of proof in both the cases are different.*

This extract is taken from ***SBI v. R. Periyasamy, (2015) 3 SCC 101 : (2015) 1 SCC (L&S) 613 : 2014 SCC OnLine SC 992 at page 108***

11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218] , this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in SBI v. Ramesh Dinkar Punde [(2006) 7 SCC 212 : 2006 SCC (L&S) 1573] . More recently, in SBI v. Narendra Kumar Pandey [(2013) 2 SCC 740 : (2013) 1 SCC (L&S) 459] , this Court observed that a disciplinary authority is expected to prove the charges levelled against a bank officer on the preponderance of probabilities and not on proof beyond reasonable doubt.

12. Further, in Union Bank of India v. Vishwa Mohan [(1998) 4 SCC 310 : 1998 SCC (L&S) 1129] , this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus, in that case the Court set aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

13. While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a government department, this Court in Commr. of Police v. Mehar Singh [(2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often the criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long-standing view on this subject was settled by this Court in R.P. Kapur v. Union of India [AIR 1964 SC 787] , whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view.

In the light of the aforesaid evidence as well the written admission of the workman against which there is nothing to indicate that it was involuntary, the finding of the Enquiry Officer holding the charges proved is held perfectly legal and issue no.-2 is answered accordingly.

Issue No.-3 :-

The settled proposition of law is that Courts will not interfere in the punishment unless it is found to be shockingly disproportionate to the charges.

Hon'ble Apex Court in ***B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749*** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."

In ***DG, RPF vs. Sai Babu (2003) 4 SCC 331***, Hon'ble Apex Court has observed that:

"6……. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works."

In ***United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364*** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

In ***Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257*** Hon'ble Supreme Court reiterated the legal position as follows:

"8. …… The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

In ***State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580*** Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

Hon'ble Apex Court in *Administrator,* ***UnionTerritory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101*** has observed that

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

In the case of **State of T.N. vs. K. Guruswami, (1996) 7 SCC 114** held that

2. This appeal is preferred against the judgment of the Tamil Nadu Administrative Tribunal. The respondent was a Sales Tax Officer. He was prosecuted for offences under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 as well as Section 201 of the Penal Code, 1860. The trial court found him guilty under the said provisions and sentenced him to imprisonment by its order dated 7-9-1976. On 31-10-

1978, a notice was issued to the respondent by the State asking him to show cause why he should not be dismissed on the basis of the conduct which led to his conviction aforesaid. The respondent was dismissed on 27-11-1978 with reference to Rule 17(c) of Tamil Nadu Civil Services Rules which is evidently referable to proviso (a) to Article 311(2) of the Constitution of India. Subsequently, on 10-12-1981, the High Court dismissed the appeal preferred by the respondent against his conviction and sentence. The special leave petition filed by him has also been dismissed. After all this was over, the respondent approached the High Court by way of a writ petition questioning the order of his dismissal which was transferred to the Tamil Nadu State Administrative Tribunal. The Tribunal has set aside the said dismissal order on the ground that no ample opportunity was given to the respondent to show cause against the action proposed. The Tribunal holds that though the respondent did not show cause pursuant to the show-cause notice, yet it was obligatory upon the authority to consider the appropriate punishment called for in the facts and circumstances of the case. In our opinion, the said principle can make no difference in the facts of this case. Here, the respondent has been convicted for corruption and there can be nothing short of dismissal in such cases. No other lesser punishment can be contemplated in such cases.

In another case **Rajasthan SRTC vs. Bajrang Lal (2014) 4 SCC 693 para 21 & 22** are being reproduced as follows :-

21. As regards the question of disproportionate punishment is concerned, the issue is no more res integra. In U.P. SRTC v. Suresh Chand Sharma [(2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239] , it was held as under : (SCC p. 561, para 22)

"22. In Municipal Committee, Bahadurgarh v. Krishnan Behari [(1996) 2 SCC 714 : 1996 SCC (L&S) 539 : (1996) 33 ATC 238] this Court held as under : (SCC p. 715, para 4)

'4. … In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.'

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam [(1976) 3 SCC 71 : 1976 SCC (L&S) 381] , U.P. SRTC v. Basudeo Chaudhary [(1997) 11 SCC 370 : 1998 SCC (L&S) 155] , Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha [(2000) 7 SCC 517 : 2000 SCC (L&S) 962] , Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469] and Rajasthan SRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714] ."

22. In view of the above, the contention raised on behalf of the respondent employee, that the punishment of removal from service is disproportionate to the delinquency is not worth acceptance. The only punishment in case of the proved case of corruption is dismissal from service.

This extract is taken fro**m *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721 : 2011 SCC OnLine SC 416 at page 587**

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

8. When a court is considering whether the punishment of "termination from service" imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to the instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for

the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be the account-holder was an impostor, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A bank is justified in contending that not only the employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.

This extract is taken from ***U.P. SRTC v. Suresh Chand Sharma, (2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239 : 2010 SCC OnLine SC 648 at page 561***

21. We do not find any force in the submissions made by Dr. J.N. Dubey, learned Senior Counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to misappropriate the public money.

22. In Municipal Committee, Bahadurgarh v. Krishnan Behari [(1996) 2 SCC 714 : 1996 SCC (L&S) 539 : AIR 1996 SC 1249] this Court held as under : (SCC p. 715, para 4)

"4. … In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam [(1976) 3 SCC 71 : 1976 SCC (L&S) 381 : AIR 1975 SC 2025] , U.P. SRTC v. Basudeo Chaudhary [(1997) 11 SCC 370 : 1998 SCC (L&S) 155] , Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha [(2000) 7 SCC 517 : 2000 SCC (L&S) 962] , Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469 : AIR 2001 SC 930] and Rajasthan SRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714] .

23. In NEKRTC v. H. Amaresh [(2006) 6 SCC 187 : 2006 SCC (L&S) 1290 : AIR 2006 SC 2730] and U.P. SRTC v. Vinod Kumar [(2008) 1 SCC 115 : (2008) 1 SCC (L&S) 1] this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal.

24. Thus, in view of the above, the contention raised on behalf of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee, is not worth acceptance.

This extract is taken from ***SBI v. Ajai Kumar Srivastava, (2021) 2 SCC 612 : (2021) 1 SCC (L&S) 457 : 2021 SCC OnLine SC 4 at page 631***

42. Before we conclude, we need to emphasise that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24-7-1999 confirmed in departmental appeal by order dated 15-11-1999.

In the instant case the workman, committed gross misconduct; whereby he took away Rs. 115000/- from the cash of the bank has been found proved after enquiry. This charge involves lack of integrity and devotion for duty which is the core of any service punishment for which is major punishment including dismissal from service also. This is definitely an act prejudicial to the interest of the Bank, which leads to loss of faith in the workman. It has been submitted from the side of the workman that the unblemished service record of the workman was ignored and also ignored was the fact that there was no loss to the management because the workman himself deposited the amount on the same day. I am not inclined to accept this argument because the misconduct involves lack of integrity and is an act of moral turpitude. No employer can afford to have an employee in whom it has lost confidence. Thus, the Bank being a financial institution dealing with the public money, the employees of the Bank are required to exhibit utmost honesty and integrity in day to day transaction/functioning. The act of dishonesty or fraud or misappropriation lowers down the reputation of Bank in public. The public lose their confidence in Bank, which affects Bank's business and finally the national economy.

In ***Air India Corporation Bombay vs. V.A. Ravellow 1972 (25) FLR 319 (SC)*** it has been observed that:

> ***"Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.***"

In ***Knhaiyalal Agarwal and others vs. Factory Manager, Gwaliar Sugar Co. Ltd. AIR 2001 SC 3645*** Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

> ***"(i) the workman is holding the position of trust and confidence; (ii) by abusing such position, be commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing the inconvenient to the employee, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved."***

In ***State Bank of India and another v. Bela Bagchi and others AIR 2005 SC 3272*****,** repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence.

Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

On the basis of above discussion the punishment is held not disproportionate to the charge and issue no.-3 is answered accordingly.

Issue No.-4 :-

In the light of findings recorded, the workman is held entitled to no relief.

No other point was argued.

Accordingly, the petition is held sans merit and is liable to be dismissed.

A W A R D

Holding the action of management of Assistant General Manager State Bank of India, in issuing orders of dismissal from service to Shri Govind Kanungo S/o. Poonam Chand Kanungo w.e.f. 12.05.2011 justified, the petition is dismissed.

DATE:- 08/04/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1129.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (09/2015) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-165]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.09/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2024-IR (B-I)-165]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/09/2015

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Vikas Sonkar,

Daily Wage Employee State Bank of India,

Branch Harda, Siangaj Indore, Simrol

MPST, Indore and through,

The General Secretary,

Daily Wage Bank Employees Organization,

F-1, Trupti Vihar Ujjain (M.P.)

Applicant/Workman

Versus

The Deputy General Manager,

State Bank of India, Administrative Office,

5, Yashant Niwas Road, Indore (M.P.)

Non-Applicant/Management

(J U D G E M E N T)

(Passed on this 15th day of April 2024)

The applicant workman has filed this petition U/S. 2-A (2 & 3) of the Industrial Disputes Act, hereinafter, referred to by the word 'Act' seeking the relief of his reinstatement with all back wages and benefits setting aside the punishment of his dismissal from service passed by the non-applicant.

According to the applicant, he was engaged as a daily casual worker by management and worked from February, 2001 till 31.12.2013 continuously. He was terminated by management without any notice or compensation which is against law. He has sought the relief of his reinstatement with all back wages and benefits.

Case of the non-applicant is that he was a daily wager engaged as and when required and not a regular worker, engaged as and when required, never completed 240 days in any year.

No evidence was ever filed by any of the parties in this Tribunal, though the workman filed photocopied document, he never cared to prove them; no evidence adduced by workman. Management also did not filed any evidence .

At argument stage, none appeared for applicant. Heard Learned Counsel for Non-applicant Shri Pranay Choubey.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the petition deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the Appellant is not proved, the petition deserves to be answered against the Applicant and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 15/04/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1230.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नर्मदा झाबुआ ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (02/2016) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I) -166]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.02/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Narmada Jhabua Gramin Bank and their workmen.

[No. L-12025/01/2024-IR (B-I)-166]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/02/2016

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Devla Behra

Clerk cum Cashier

Narmada Jhabua Gramin Bank

Branch Karwad, Distt.- Jhabua (MP)

Workman

Versus

Chairman

Narmada Jhabua Gramin Bank

Head Office – 56, New Palasiya

Indore (MP)

Management

(J U D G E M E N T)

(Passed on this 12th day of April 2024)

The workman has filed this petition U/S. 2-A (2 & 3) of the Industrial Disputes Act, hereinafter, referred to by the word 'Act' seeking the relief of his reinstatement with all back wages and benefits setting aside the punishment of his dismissal from service passed by the management on 16.04.2014.

According to the workman, he was first appointed as a Clerk on 03.01.1991, while he was posted as a Cashier in the Karwad Branch of the Bank, he received money from different account holders on 10.06.2013 & 11.06.2013 for being deposited in their accounts but he forgot to deposit and he was issued a charge sheet on 08.08.2013 in this respect. He submitted his reply on 22.08.2013 admitting his fault assured the management not repeat this mistake. A departmental enquiry was conducted against him against rules and procedures. He was made to admit his guilt under pressure and under an assurance that no severe punishment will be awarded to him. He was terminated from service on the basis of the charge sheet which is against law and disproportionate to the charge. His appeal was also wrongly dismissed. He has prayed that setting aside his dismissal, he be reinstated with all back wages and service benefits.

In its written statement of Defense, management has taken a case that while the applicant was working as Cashier cum Clerk, he was found to have misappropriated between the period 10.06.2011 to 11.06.2011. Several complaint from the account holders were received alleging that the workman received money from the account holders for depositing in their accounts he made entry in the passbooks of the account holders but he did not credit the amounts received in the bank record nor did he deposit with the bank and thus misappropriated amount of Rs. 6,34,800/- relating to as many as 17 accounts. A show cause notice was issued to him with a copy of charge sheet after placing him under suspension he admitted his fault in his reply. Management decided to conduct a departmental enquiry and during the enquiry, the workman admitted the charges. The Enquiry Officer submitted his report holding the workman guilty of misconduct. In reply to the show cause notice issued by the disciplinary authority on enquiry report, he again admitted the charges. Hence, he was rightly held guilty for the misconduct and was adequately punished for his misconduct. Accordingly, management has prayed that the petition be dismissed.

Following preliminary issue was framed vide order dt. 01.09.2022 :-

5. Whether departmental enquiry conducted against workman is proper and legal ?

Issue no.-1 was taken as preliminary issue. The workman filed his affidavit as his examination in chief. He was cross examined by management. Management examined its witness and proved enquiry papers Ex. M/1 to Ex. M/8.

On the basis of the evidence on record, preliminary issue was decided vide order dated 01.09.2022 holding the departmental enquiry legal and proper. This order is part of this award.

Thereafter, following additional issues were framed :-

1. Whether charges imposed against workman are proved from the evidence in the enquiry ?

2. Whether the punishment is legal and proper ?

3. What relief the workman is entitled ?

Parties were given opportunity to lead evidence on remaining issues. No evidence was given by any of the parties.

At the stage of argument, learned Counsel Shri Arun Patel appeared for the workman, his argument were heard. Argument of learned Counsel for Bank Shri Ashish Shroti were heard by me and the record has also been perused.

Issue No.-2:-

The charges against the workman were as follows:-

That, while being posted as Clerk cum Cashier no 10.06.2013 & 11.06.2013 he received total Rs. 6,34,800/- from different account holders (total 17 in numbers) and made a entry in this respect in their passbooks but did not credit these amounts in their accounts and also did not deposit the amount received with the bank and thus committed misconduct under Service Rules.

It comes out from perusal of enquiry papers during enquiry, that the workman has filed letter before the Enquiry Officer during the enquiry proceedings admitting the misconduct. As has been mentioned earlier, the workman has been consistently admitting his guilt right from day one and has filed letter to the management in this respect. Furthermore, management has examined its witness, who has proved the documents.

The settled law is that the standard of proof required to prove a charge during departmental enquiry and in criminal trial is different. In the former, charge is to be proved to the extent of preponderance whereas in the later, charge is to be proved beyond reasonable doubt.

Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. Ref. ***T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255***

Standard of proof in a departmental enquiry which is quasicriminal/quasi-judicial in nature: Disciplinary proceedings, however, being quasi-criminal in nature, ***there should be some evidence to prove the charge.*** *Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasijudicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Ref:* ***(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 (paras 10 , 11, 12 & 13). (ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 (Para 25)***

In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, *it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."*

In the case of ***T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255****, it has been held by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.*

In the cases of ***Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425****, the distinction between departmental enquiry and criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "*

IN ***Judgment dated 20.05.2022 of the Supreme Court in Civil Appeal No. 3490/2022, State Bank of India Vs. K.S. Vishwanath. (ii) Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jaya Bhay, 2022 LiveLaw (SC) 3*** *it has been held that acquittal in criminal trial has no bearing or relevance on disciplinary proceeding as the standard of proof in both the cases are different.*

This extract is taken from ***SBI v. R. Periyasamy, (2015) 3 SCC 101 : (2015) 1 SCC (L&S) 613 : 2014 SCC OnLine SC 992 at page 108***

11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218] , this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in SBI v. Ramesh Dinkar Punde [(2006) 7 SCC 212 : 2006 SCC (L&S) 1573] . More recently, in SBI v. Narendra Kumar Pandey [(2013) 2 SCC 740 : (2013) 1 SCC (L&S) 459] , this Court observed that a disciplinary authority is expected to prove the charges levelled against a bank officer on the preponderance of probabilities and not on proof beyond reasonable doubt.

12. Further, in Union Bank of India v. Vishwa Mohan [(1998) 4 SCC 310 : 1998 SCC (L&S) 1129] , this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus, in that case the Court set aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

13. While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a government department, this Court in Commr. of Police v. Mehar Singh [(2013) 7 SCC 685 : (2013) 3

SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often the criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long-standing view on this subject was settled by this Court in R.P. Kapur v. Union of India [AIR 1964 SC 787] , whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view.

In the light of the aforesaid evidence as well the written admission of the workman against which there is nothing to indicate that it was involuntary, the finding of the Enquiry Officer holding the charges proved is held perfectly legal and issue no.-2 is answered accordingly.

Issue No.-3 :-

The settled proposition of law is that Courts will not interfere in the punishment unless it is found to be shockingly disproportionate to the charges.

Hon'ble Apex Court in ***B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749*** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

> ***"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."***

In ***DG, RPF vs. Sai Babu (2003) 4 SCC 331***, Hon'ble Apex Court has observed that:

> ***"6 Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works."***

In ***United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364*** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

> ***"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.***
>
> ***12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.***"

In ***Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257*** Hon'ble Supreme Court reiterated the legal position as follows:

> ***"8. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."***

In ***State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580*** Hon'ble Supreme Court stated that:

> ***"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.***

Hon'ble Apex Court in *Administrator,* ***UnionTerritory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101*** has observed that

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

In the case of **State of T.N. vs. K. Guruswami, (1996) 7 SCC 114** held that

2. This appeal is preferred against the judgment of the Tamil Nadu Administrative Tribunal. The respondent was a Sales Tax Officer. He was prosecuted for offences under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 as well as Section 201 of the Penal Code, 1860. The trial court found him guilty under the said provisions and sentenced him to imprisonment by its order dated 7-9-1976. On 31-10-1978, a notice was issued to the respondent by the State asking him to show cause why he should not be dismissed on the basis of the conduct which led to his conviction aforesaid. The respondent was dismissed on 27-11-1978 with reference to Rule 17(c) of Tamil Nadu Civil Services Rules which is evidently referable to proviso (a) to Article 311(2) of the Constitution of India. Subsequently, on 10-12-1981, the High Court dismissed the appeal preferred by the respondent against his conviction and sentence. The special leave petition filed by him has also been dismissed. After all this was over, the respondent approached the High Court by way of a writ petition questioning the order of his dismissal which was transferred to the Tamil Nadu State Administrative Tribunal. The Tribunal has set aside the said dismissal order on the ground that no ample opportunity was given to the respondent to show cause against the action proposed. The Tribunal holds that though the respondent did not show cause pursuant to the show-cause notice, yet it was obligatory upon the authority to consider the appropriate punishment called for in the facts and circumstances of the case. In our opinion, the said principle can make no difference in the facts of this case. Here, the respondent has been convicted for corruption and there can be nothing short of dismissal in such cases. No other lesser punishment can be contemplated in such cases.

In another case **Rajasthan SRTC vs. Bajrang Lal (2014) 4 SCC 693 para 21 & 22** are being reproduced as follows :-

21. As regards the question of disproportionate punishment is concerned, the issue is no more res integra. In U.P. SRTC v. Suresh Chand Sharma [(2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239] , it was held as under : (SCC p. 561, para 22)

"22. In Municipal Committee, Bahadurgarh v. Krishnan Behari [(1996) 2 SCC 714 : 1996 SCC (L&S) 539 : (1996) 33 ATC 238] this Court held as under : (SCC p. 715, para 4)

'4. … In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.'

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam [(1976) 3 SCC 71 : 1976 SCC (L&S) 381] , U.P. SRTC v. Basudeo Chaudhary [(1997) 11 SCC 370 : 1998 SCC (L&S) 155] , Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha [(2000) 7 SCC 517 : 2000 SCC (L&S) 962] , Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469] and Rajasthan SRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714] ."

22. In view of the above, the contention raised on behalf of the respondent employee, that the punishment of removal from service is disproportionate to the delinquency is not worth acceptance. The only punishment in case of the proved case of corruption is dismissal from service.

This extract is taken fro**m *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721 : 2011 SCC OnLine SC 416 at page 587**

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in

departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

8. When a court is considering whether the punishment of "termination from service" imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to the instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be the account-holder was an impostor, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A bank is justified in contending that not only the employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.

This extract is taken from ***U.P. SRTC v. Suresh Chand Sharma, (2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239 : 2010 SCC OnLine SC 648 at page 561***

21. We do not find any force in the submissions made by Dr. J.N. Dubey, learned Senior Counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to misappropriate the public money.

22. In Municipal Committee, Bahadurgarh v. Krishnan Behari [(1996) 2 SCC 714 : 1996 SCC (L&S) 539 : AIR 1996 SC 1249] this Court held as under : (SCC p. 715, para 4)

"4. … In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam [(1976) 3 SCC 71 : 1976 SCC (L&S) 381 : AIR 1975 SC 2025] , U.P. SRTC v. Basudeo Chaudhary [(1997) 11 SCC 370 : 1998 SCC (L&S) 155] , Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha [(2000) 7 SCC 517 : 2000 SCC (L&S) 962] , Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469 : AIR 2001 SC 930] and Rajasthan SRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714] .

23. In NEKRTC v. H. Amaresh [(2006) 6 SCC 187 : 2006 SCC (L&S) 1290 : AIR 2006 SC 2730] and U.P. SRTC v. Vinod Kumar [(2008) 1 SCC 115 : (2008) 1 SCC (L&S) 1] this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal.

24. Thus, in view of the above, the contention raised on behalf of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee, is not worth acceptance.

This extract is taken from ***SBI v. Ajai Kumar Srivastava, (2021) 2 SCC 612 : (2021) 1 SCC (L&S) 457 : 2021 SCC OnLine SC 4 at page 631***

42. Before we conclude, we need to emphasise that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24-7-1999 confirmed in departmental appeal by order dated 15-11-1999.

In the instant case the workman, committed gross misconduct; whereby he misappropriated Rs. 6,34,800/- has been found proved after enquiry. This charge involves lack of integrity and devotion for duty which is the core of any service punishment for which is major punishment including dismissal from service also. This is definitely an act prejudicial to the interest of the Bank, which leads to loss of faith in the workman. It has been submitted from the side

of the workman that the unblemished service record of the workman was ignored and also ignored was the fact that there was no loss to the management because the workman himself deposited the amount on the same day. I am not inclined to accept this argument because the misconduct involves lack of integrity and is an act of moral turpitude. No employer can afford to have an employee in whom it has lost confidence. Thus, the Bank being a financial institution dealing with the public money, the employees of the Bank are required to exhibit utmost honesty and integrity in day to day transaction/functioning. The act of dishonesty or fraud or misappropriation lowers down the reputation of Bank in public. The public lose their confidence in Bank, which affects Bank's business and finally the national economy.

In ***Air India Corporation Bombay vs. V.A. Ravellow 1972 (25) FLR 319 (SC)*** it has been observed that:

> ***"Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.***"

In ***Knhaiyalal Agarwal and others vs. Factory Manager, Gwaliar Sugar Co. Ltd. AIR 2001 SC 3645*** Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

> ***"(i) the workman is holding the position of trust and confidence; (ii) by abusing such position, be commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing the inconvenient to the employee, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved."***

In ***State Bank of India and another v. Bela Bagchi and others AIR 2005 SC 3272*****,** repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence.

Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

On the basis of above discussion the punishment is held not disproportionate to the charge and issue no.-3 is answered accordingly.

Issue No.-4 :-

In the light of findings recorded, the workman is held entitled to no relief.

No other point was argued.

Accordingly, the petition is held sans merit and is liable to be dismissed.

A W A R D

Holding the action of management of Narmada Jhabua Gramin Bank, in issuing orders of dismissal from service to Shri Devla Behra w.e.f. 20.04.2015 justified, the petition is dismissed. No order as to cost.

DATE:- 12/04/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1231.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एकता एंटरप्राइजेज एच एंड टी कॉन्ट्रैक्टर के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1 दिल्ली के पंचाट (146/2019) प्रकाशित करती है।

[सं. एल - 42012/12/2019- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.146/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Delhi* as shown in the Annexure, in the industrial dispute between the management of M/s. Ekta enterprise H & T Contractor and their workmen.

[No. L-42012/12/2019-IR (B-I]

SALONI, Dy. Director

ANNEXURE

Before the Justice Vikas Kumar Srivastava (Retd.) Presiding Officer,

Government of India Ministry of Labour & Employment,

Central Government Industrial Tribunal

Cum – Labour Court-I, New Delhi

ID No.146/2019

Shri Sonu Kumar,

Through Indian Steel & Metal Worker's Union,

1800/9, Govindpuri Extention, Nain Raod,

Kalkaji, New Delhi – 110019.

Workman…

Versus

1. M/s. Ekta Enterprises H & T Contractor,
   Malgodown Road, Kanakpur,
   Rajasthan, Jaipur – 303801.
2. The Container Corporation of India Ltd.,
   CONCOR, Bhawan, C-3, Mathura Road,
   Opp. Apollo Hospital, New Delhi – 110076.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-42012/12/2019-IR(B-I) dated 04.06.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"1). Whether Shri Sonu Kumar has been working with the contract M/s Ekta Enterprises H&T? If so, has be ever been deployed by the contractor with M/s Container Corporation of India Ltd.?

2). Whether the action of the management of M/s Ekta Enterprises H&T Contractor of Container Corporation of India, in terminating the services of Sh. Sonu Kumar w.e.f. 11.07.2016 is justified or not? If not, what relief will be given to the workmen and from which date?

3). Whether the action of the management of M/s Ekta Enterprises H&T Contractor by not paying earned wages of the workman during the period of 31.03.2016 to 10.07.2016 is justified or not? If not, what relief will be given to the workman and from which date?'

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 18.10.2023

नई दिल्ली, 18 जून, 2024

का.आ. 1232.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण** – सह– **श्रम न्यायालय**, लखनऊ के पंचाट (पहचान **संख्या 65/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **11/06/2024** को प्राप्त हुआ था।

[सं. एल - 22013/01/2024- आई आर (**सी. एम.** (बी-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 65/2020*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 11***/06/2024.***

[No. L-22013/01/2024–IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 65/2020

Ref. No. D-853/AB/2020/42/IR/DDN

Suresh Chandra Vs. FCI

BETWEEN

Sri Suresh Chandra S/o Sri Rampal,

Village- Karnapur, Post- Karod, Tehsil- Bisalpur

District- Pilibhit (U.P.)

…… Workman

AND

(1) The General Manager (Principal Employer)
Food Corporation of India,
Regional Office, T.C.3, V-Vibhuti Khand, Gomti Nagar, Lucknow (UP)

(2) The Regional Manager (Appointing Authority)
Food Corporation of India (FCI),
District, Office, Shahjahanpur (U.P.)

(3) Sri Rajendra Saxena (Representative)
M/s Keshav Singh and Ors. T.P. No. 315. Katia Tolla,
Shahajanpur (U.P.)

……. Respondent

AWARD

By letter/order dated 09.09.2020 the following reference has been referred to this Tribunal for adjudication.

"*Whether the termination of the service of Sri Suresh Chandra S/o Sri Rampal, who was engaged in Roja Depot of FCI, Shahajanpur, (UP) by M/s Keshav Singh, Contractor of FCI, for the period 08.08.2008 to 23.04.2010 is proper and justified".*

If not, to what relief, the workman is entitled to?"

From the perusal of the record the position which emerged out that on 21.10.2023 notice was issued to the workman to file statement of claim along with witness and documents.

Thereafter on the following dates i.e. on 01.01.2021, 08.11.2021, 07.03.2021, 20.05.2022, 12.8.2022, 26.10.2022, 11.01.2023 time was granted to file statement of claim by claimant however the same was not filed.

11.01.2023

Matter taken up revised list.

Parties absent.

Last opportunity is granted for CS.

List on 21.03.2023.

On 21.03.2023 an order was passed quoted herein below:-

Matter taken up in revised list.

Sri Neeraj Singh holding brief Sri Dhirendra Singh for FCI.

None for claimant.

In spite of last opportunity, claim statement is not filed, accordingly opportunity for statement of claim is closed.

List on 13.03.2023 for ex-parte hearing.

On **08.08.2023** was passed held as under:-

Matter taken up in revised list.

Sri Dhirendra Sing For FCI.

None for claimant.

List on 03.11.2023 for ex-parte haring. Notice to clamant.

Today when the matter was taken up in the revised cause list neither the workman nor any legal representative appeared also till date no statement of claimant has been filed.

Accordingly after hearing Sri Dhirendra Singh learned counsel for the respondent and going through the record, taking into consideration the facts, stated here and above that in spite of due opportunity statement of claim has not been filed by claimant.

So taking into consideration the said facts and the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail.

Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

As the workmen/claimant has filed any statement of claim, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; the workman is not entitled for any relief.

Award as above.

Lucknow. Justice ANIL KUMAR, Presiding Officer

Date 08.02.2024

नई दिल्ली, 18 जून, 2024

का.आ. 1233.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (111/2014) प्रकाशित करती है।

[सं. एल - 12012/03/2015- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.111/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/03/2015-IR (B-I)

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.111/2014

Registered on:-02.03.2015

Sh. Tarun Kumar S/o Sh. Suresh Chander Bansal, R/o Village Gurwadi, Tehsil & Distt. Palwal, Haryana.

….....Workman

Versus

4. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.

5. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).

6. The Sr. Manager, Serve Haryana Gramin Bank, Sikri, Palwal(Haryana).

.....…Respondents/Management

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/03/2015-IR(B-I) Dated 22.01.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Tarun Kumar S/o ShSuresh Chander w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/management on 17.05.2009 at the payment of Rs.280/- per day with respondent no.3. Respondents/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman worked from 17.05.2009 in Dudhola Branch upto 07.11.2011 under the Manager Vijay Kumar Gupta. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 80 and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 25.02.2016/23.02.2021 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record. The said application was dismissed by my Ld. Predecessor on 22.03.2021

7. Both the parties have not filed any written arguments.

8. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties.

9. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

10. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 17.5.2009 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Dudhola Branch, Palwal for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account.

11. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman the workman has admitted that a few times payments were made by vouchers and sometime through bank and amount is deposited in his bank account. When he was being paid through vouchers and sometime through bank and the amount is deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 17.5.2009 to 05.12.2013 is not proved when the workman was having best evidence in his possession. So far as vouchers placed on record by the workman are concerned, these vouchers were never proved by calling official of the bank. Moreover, from these vouchers it cannot be said conclusively that workman worked 240 days prior to the year of his retrenchment.

12. It is added here that workman had moved an application on 25.2.2016 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 25.02.2016/23.02.2021 for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

13. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

14. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection of Section 25-F of the Act is not available to the workman.

15. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

16. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1234.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (77/2014) प्रकाशित करती है।

[सं. एल - 12012/70/2014- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.77/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/70/2014-IR (B-I)

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.77/2014

Registered on:-02.02.2015

Sh. Itwari Lal S/o Sh. Yuvraj, R/o VPO Hasanpur, Distt. Palwal(Haryana).

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Branch Hasanpur, Palwal(Haryana).

.....…Respondents/Management

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/70/2014-IR(B-I) Dated 11.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Itwari Lal S/o Late Shri Yuvraj w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/management on 01.11.2010 at the payment of Rs.280/- per day with respondent no.3. Respondent/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondents/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman was engaged on 01.11.2010 at Hasanpur Branch and worked upto 05.12.2013 under the Manager Kishan Singh Sarot. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi.

After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 73 and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 27.07.2016 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record. The said application was dismissed by my Ld. Predecessor on 22.03.2021.

7. The workman filed written arguments, alleging therein that he was appointed as Peon on 01.11.2010 in the office of Manager of Sarv Haryana Gramin Bank previously known as Gurgaon Gramin Bank, Hasan Pur Branch, Palwal and used to work for the whole day. The workman was granted TA, DA for his travel allowance by the management. The management violated the provisions of the Industrial Disputes Act and did not supply appointment letter, PF account number, ESI card to the workman. The management got sign from the workman on plain papers on the pretext of using these papers for the service record and workman did sign these blank papers on the asking of the officials of the bank as the requirement of the service of the workman. The workman did not protest against the official for getting the signatures on the blank papers, being afraid of losing the job. The record pertaining to the salary of workman is available with the concerned-branch of the bank in the shape of debit slips and contingency account. The work of the workman was satisfactory and at no point of time any complaint was made against the work of the workman. On the change of the name of the bank to Sarv Haryana Gramin Bank, management started harassing the workman on one pretext or the other. The services of the workman were terminated orally on 05.12.2013 without issuing any notice or retrenchment compensation. The workman has completed more than 240 days in a calendar year in the employment of the management without any break. The work is still available with the management and the workman is no where gainfully employed. The workman filed an application for summoning the attendance record, salary record, provident fund details and ESI details of the workman but the management failed to supply the record. Adverse inference may kindly be drawn against the management for not producing the summoned record. On 28.04.2014, after terminating the services of workman, management advertised 175 post of Office Attendant(Multipurpose) Group C whereas workman is available to serve on this post. Workman along with others challenged this advertisement before the Hon'ble Punjab & Haryana High Court by filing CWP No.9254 of 2014 and the Hon'ble High Court directed that in the meanwhile, the applications made by the workmen for the above said posts shall be accepted by the respondent-bank subject to the decision of the writ petition(Annexure P-2 & P-3). The management decided to withdraw the advertisement dated 28.04.2014 on 26.04.2016 and the said writ petition was disposed of as become infructuous(Annexure P-4). Earlier the management has issued letter dated 25.11.2009(Annexure P-5) raising requirement of Part Time worker and engaging part time workers for the smooth working of the branch. On 14.09.2010(Annexure P-6) a letter was issued by the General Manager of Gurgaon Gramin Bank directing not to engage a particular person for more than 55 days in continuity and to ensure that the person engaged as per point no.1 mentioned above is not engaged for more that 230 days in a year, whereas the workman had worked more than 240 days in many calendar years. On 08.11.2011 a letter was issued to the workman by the management to appear for the post of office attendant on 17.11.2011 at 01.00 pm but the workman was not allowed to attend the interview for the reason best known to the management(Annexure P-7). The workman applied for the post advertised vide advertisement dated 28.04.2014(P-2) and copy of the challan form deposited by the workman is attached as Annexure P-8. During the pendency of the present case, the management issued circular dated 23.06.2023 wherein offices/branches has been directed to fix the charges of the daily wagers(Annexure P-9). Earlier also the management has employed person on the post and one of the employment letter issued is attached herewith as Annexure P-10.

8. Management has not filed any written argument but has argued orally.

9. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties.

10. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar***

Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

11. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 1.11.2010 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Hasan Pur Branch, Palwal and worked for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account.

12. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman has admitted that a few times payments were made by vouchers and sometime through bank and amount is deposited in his bank account. When he was being paid through vouchers and sometime through bank and the amount is deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 1.11.2010 to 05.12.2013 is not proved when the workman was having best evidence in his possession. So far as vouchers placed on record by the workman are concerned, these vouchers were never proved by calling official of the bank. Moreover, from these vouchers it cannot be said conclusively that workman worked 240 days prior to the year of his retrenchment.

13. It is added here that workman had moved an application on 27.07.2016/23.02.2021 for issuing directions to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 27.07.2016/23.02.2021 for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

14. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

15. In his written argument, the workman has placed on record certain documents which are irrelevant for proving that workman had worked for 240 days preceding the year of his termination. These documents which he has attached with his written argument are not admissible in evidence because these documents were never exhibited by the workman in his statement or by calling any other person.

16. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection of Section 25-F of the Act is not available to the workman.

17. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

18. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1235.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (74/2014) प्रकाशित करती है।

[सं. एल - 12012/81/2014- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.74/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/81/2014-IR (B-I)

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.74/2014

Registered on:-02.02.2015

Sh. Heera Singh S/o Sh. Mool Chand, R/o Village Chiranata, Teh. & Distt. Palwal.

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Atali Branch, Haryana.

.....…Respondents/Managements

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/81/2014-IR(B-I) Dated 11.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Heera Singh S/o Sh. Mool Chand w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/managements on 02.04.2013 at the payment of Rs.280/- per day with respondent no.3. Respondent/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman was engaged on 02.04.2013 at Atali Branch and worked upto 05.12.2013 under the Manager Karnail Singh. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi.

After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 7 and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 25.02.2016 -23.2.21 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record and same was dismissed by my Ld. Predecessor on 22.03.2021.

7. Both the parties have not filed any written arguments.

8. I have heard learned counsel for the parties and have gone through the entire evidence placed on file by the parties.

9. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

10. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 02.04.2013 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Atali Palwal for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account. He has no document original from the bank.

11. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman had admitted that few times payments were made by vouchers and sometime through bank and amount is deposited in his bank account. He has no document original from the bank. When he was being paid through voucher and sometime through bank and amount is deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Photocopies of vouchers of sweeping charges already issued by the bank have been placed on file which have not been proved by calling the official of the bank. Moreover, from the said photocopies of vouchers it cannot be said that workman had worked 240 days in the preceding year prior to his termination on 05.12.2013. Thus, his bald statement maintaining that he worked from 02.04.2013 to 05.12.2013 is not proved when the workman was having best evidence in his possession.

12. It is added here that workman had moved an application on 25.02.2016 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 25.02.2016 for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

13. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

14. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection of Section 25-F of the Act is not available to the workman.

15. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

16. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1236.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (69/2014) प्रकाशित करती है।

[सं. एल - 12012/65/2014- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.69/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen.

[No. L-12012/65/2014-IR (B-I)

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.69/2014

Registered on:-02.02.2015

Sh. Harkesh Kumar S/o Sh. Mahendra, R/o Village Ranipur, Teh. & Distt. Palwal.

….....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Branch(Palwal Main), Haryana.

.....…Respondents/Management

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/65/2014-IR(B-I) Dated 05.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Haresh Kumar S/o Sh. Mahendra Avtar w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/management on 15.03.2010 at the payment of Rs.280/-

per day with respondent no.3. Respondents/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman was engaged on 05.02.2011 at Gharot Branch and worked upto November, 2013 under the Manager Vijay Pal. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 24 and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 27.07.2016/23.02.2021 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record.

7. The workman filed written arguments, alleging therein that he was appointed as Peon on 15.03.2010 in the office of Manager of Sarv Haryana Gramin Bank previously known as Gurgaon Gramin Bank, Rajinder Park Branch, Gurgaon for the whole day. The workman was drawing salary @Rs.280/- per day from the management. The workman was granted TA, DA for his travel allowance by the management. The management violated the provisions of the Industrial Disputes Act and did not supply appointment letter, PF account number, ESI card to the workman. The management got sign from the workman on plain papers on the pretext of using these papers for the service record and workman did sign these blank papers on the asking of the officials of the bank as the requirement of the service of the workman. The workman did not protest against the official for getting the signatures on the blank papers, being afraid of losing the job. The record pertaining to the salary of workman is available with the concerned-branch of the bank in the shape of debit slips and contingency account. The work of the workman was satisfactory and at no point of time any complaint was made against the work of the workman. On the change of the name of the bank to Sarv Haryana Gramin Bank, management started harassing the workman on one pretext or the other. The services of the workman were terminated orally on 05.12.2013 without issuing any notice or retrenchment compensation. The workman has completed more than 240 days in a calendar year in the employment of the management without any break. The work is still available with the management and the workman is no where gainfully employed. The workman filed an application for summoning the attendance record, salary record, provident fund details and ESI details of the workman but the management failed to supply the record. Adverse inference may kindly be drawn against the management for not producing the summoned record. The management replied to the RTI Application filed by the workman and the management accepted that workman having worked with the management. The management issued certificate of the employment of the workman with it whereas the present management of Haryana Gramin Bank also accepted the employment of the workman with the new entity i.e. Haryana Gramin Bank(Annexure P-1). On 28.04.2014, after terminating the services of workman, management advertised 175 post of Office Attendant(Multipurpose) Group C whereas workman is available to serve on this post. Workman along with others challenged this advertisement before the Hon'ble Punjab & Haryana High Court by filing CWP No.9254 of 2014 and the Hon'ble High Court directed that in the meanwhile, the applications made by the workmen for the above

said posts shall be accepted by the respondent-bank subjected to the decision of the writ petition(Annexure P-2 & P-3). The management decided to withdraw the advertisement dated 28.04.2014 on 26.04.2016 and the said writ petition was disposed of as become infructuous(Annexure P-4). Earlier the management has issued letter dated 25.11.2009(Annexure P-5) raising requirement of Part Time worker and engaging part time workers for the smooth working of the branch. On 14.09.2010Annexure P-6) a letter was issued by the General Manger of Gurgaon Gramin Bank directing not to engage a particular person for more than 55 days in continuity and to ensure that the person engaged as per point no.1 mentioned above is not engaged for more that 230 days in a year, whereas the workman had worked more than 240 days in many calendar years. On 08.11.2011 a letter was issued to the workman by the management to appear for the post of office attendant on 17.11.2011 at 01.00 pm but the workman was not allowed to attend the interview for the reason best known to the management(Annexure P-7). The workman applied for the post advertised vide advertisement dated 28.04.2014(P-2) and copy of the challan form deposited by the workman is attached as Annexure P-8. During the pendency of the present case, the management issued circular dated 23.06.2023 wherein offices/branches has been directed to fix the charges of the daily wagers(Annexure P-9). Earlier also the management has employed person on the post and one of the employment letter issued is attached herewith as Annexure P-10.

8. Management has not filed any written argument but has argued orally.

9. I have heard learned counsel for the parties and have gone through the entire evidence placed on file by the parties.

10. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

11. In his affidavit Ex.WW1/A the workman has reiterated his case that he was appointed as Peon on 15.03.2010 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Rajinder Park Branch, Gurgaon for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank-account.

12. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman had admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account. When he was being paid through voucher and sometime through bank and amount is deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 15.03.2010 to 05.12.2013 is not proved when the workman was having best evidence in his possession. So far as vouchers placed on record by the workman are concerned, these vouchers were never proved by calling official of the bank. Moreover, from these vouchers it cannot be said conclusively that workman worked 240 days prior to the year of his retrenchment.

13. It is added here that workman had moved an application on 27.07.2016/23.02.2021 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 27.07.2016/23.02.2021for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

14. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

15. In his written argument, the workman has placed on record certain documents which are irrelevant for proving that workman had worked for 240 days preceding the year of his termination. These documents which he has attached with his written argument are not admissible in evidence because these documents were never exhibited by the workman in his statement or by calling any other person.

16. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection of Section 25-F of the Act is not available to the workman.

17. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

18. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 जून, 2024

का.आ. 1237.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (71/2014) प्रकाशित करती है।

[सं0 एल - 12012/77/2014- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 18th June, 2024

S.O. 1237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.71/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Serve Haryana Gramin Bank and their workmen

[No. L-12012/77/2014-IR (B-I)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.71/2014

Registered on:-02.02.2015

Sh. Dalel Singh S/o Sh. Hukam Chand, R/o Village & Post Office Pinana, Distt. Sonepat, Haryana.

….....Workman

Versus

4. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.

5. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).

6. The Sr. Manager, Serve Haryana Gramin Bank, Branch Pinana, Distt. Sonipat(Haryana).

.....…Respondents/Managements

AWARD

Passed on:-23.01.2024

Central Government vide Notification No. L-12012/77/2014-IR(B-I) Dated 11.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Dalel Singh S/o Sh. Hukum Chand w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?"

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/managements on 30.3.2011 at the payment of Rs.280/- per day with respondent no.3. Respondent/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman was engaged on 23.06.2010 at Shikohpur Branch and worked upto 27.11.2013 under the Manager Anil Rastogi. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 36 and has been cross-examined by the learned counsel of management.

5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 23.2.2021 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not filed any record.

7. The workman filed written arguments, alleging therein that he was appointed as Peon on 30.03.2011 in the office of Manager of Sarv Haryana Gramin Bank previously known as Gurgaon Gramin Bank, Pinana, District Sonepat and worked till 05.12.2003 for the whole day. The workman was drawing salary @Rs.280/- per day. The workman was granted TA, DA for his travel allowance by the management. The management violated the provisions of the Industrial Disputes Act and did not supply appointment letter, PF account number, ESI card to the workman. The management got sign from the workman on plain papers on the pretext of using these papers for the service record and workman did sign these blank papers on the asking of the officials of the bank as the requirement of the service of the workman. The workman did not protest against the official for getting the signatures on the blank papers, being afraid of losing the job. The record pertaining to the salary of workman is available with the concerned-branch of the bank in the shape of debit slips and contingency account. The work of the workman was satisfactory and at no point of time any complaint was made against the work of the workman. on the change of the name of the bank to Sarv Haryana Gramin Bank, management started harassing the workman on one pretext or the other. The services of the workman were terminated orally on 05.12.2013 without issuing any notice or retrenchment compensation. The workman has completed more than 240 days in a calendar year in the employment of the management without any break. The work is still available with the management and the workman is no where gainfully employed. The workman filed an application for summoning the attendance record, salary record, provident fund details and ESI details of the workman but the management failed to supply the record. Adverse inference may kindly be drawn against the management for not producing the summoned record. The management replied to the RTI Application filed by the workman and the management accepted that workman having worked with the management. The management paid the salary to the workman against signatures and receipts(Annexure P-1). On 28.04.2014, after

terminating the services of workman, management advertised 175 post of Office Attendant(Multipurpose) Group C whereas workman is available to serve on this post. Workman along with others challenged this advertisement before the Hon'ble Punjab & Haryana High Court by filing CWP No.9254 of 2014 and the Hon'ble High Court directed that in the meanwhile, the applications made by the workmen for the above said posts shall be accepted by the respondent-bank subjected to the decision of the writ petition(Annexure P-2 & P-3). The management decided to withdraw the advertisement dated 28.04.2014 on 26.04.2016 and the said writ petition was disposed of as become infructuous(Annexure P-4). Earlier the management has issued letter dated 25.11.2009(Annexure P-5) raising requirement of Part Time worker and engaging part time workers for the smooth working of the branch. On 14.09.2010Annexure P-6) a letter was issued by the General Manger of Gurgaon Gramin Bank directing not to engage a particular person for more than 55 days in continuity and to ensure that the person engaged as per point no.1 mentioned above is not engaged for more that 230 days in a year, whereas the workman had worked more than 240 days in many calendar years. On 08.11.2011 a letter was issued to the workman by the management to appear for the post of office attendant on 17.11.2011 at 01.00 pm but the workman was not allowed to attend the interview for the reason best known to the management(Annexure P-7). The workman applied for the post advertised vide advertisement dated 28.04.2014(P-2) and copy of the challan form deposited by the workman is attached as Annexure P-8. During the pendency of the present case, the management issued circular dated 23.06.2023 wherein offices/branches has been directed to fix the charges of the daily wagers(Annexure P-9). Earlier also the management has employed person on the post and one of the employment letter issued is attached herewith as Annexure P-10.

8. Management has not filed any written argument but has argued orally.

9. I have heard learned counsesl for the parties and have gone through the entire evidence placed on file by the parties.

8. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47***.

9. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 30.03.2011 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Pinana, District Sonepat and worked till 05.12.2013 for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account.

10. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account. When he was being paid sometime through bank and the amount was deposited in his bank-account then the same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. He has placed on record photocopy of some vouchers which have not been got proved by calling any witness from the bank. Moreover, from the vouchers it cannot be deduced that workman worked 240 days preceding the year of his termination on 05.12.2013. Thus, his bald statement maintaining that he worked from 30.3.2011 to 05.12.2013 is not proved when the workman was having best evidence in his possession.

11. It is added here that workman had moved an application on 23.2.2021 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessity. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 18.02.2016 for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

12. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with

him in the shape of his bank account where his salary was deposited in the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

13. In his written argument, the workman has placed on record certain documents which are irrelevant for proving that workman had worked for 240 days preceding the year of his termination. These documents which he has attached with his written argument are not admissible in evidence because these documents were never exhibited by the workman in his statement or by calling any other person.

14. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection under Section 25 F of the Act is not available to the workman.

15. In view of my findings on the above discussed issues in the preceding paragraphs, this reference is decided against the workman.

16. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1238.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई सी आई सी आई बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-I के पंचाट (15/2020) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-167]

सलोनी, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.15/2020*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-I* as shown in the Annexure, in the industrial dispute between the management of ICICI Bank and their workmen.

[No. L-12025/01/2024-IR (B-I)-167]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.

ID No.15/2020

Registered on:-17.12.2020

Manpreet Kaur H.No.3153, Sector 19-D, Chandigarh Permanent Address: H.No.714, Ward No.9, Street No.4, Nanak Nagri Moga, Punjab-142001.

…….Workman

Versus

1. Zonal Head- Retail, PHHJ Zonal Office, ICICI Bank Limited SCO 143-A, 2nd Floor, City Emporium Mall, Industrial Area Phase-1, Chandigarh-160002.

2. ICICI Bank Ltd. through its Chairman cum Managing Director ICICI Bank Towers, Bandra-Kurla Complex Mumbai-400051.

……Managements

AWARD

Passed On:-19.03.2024

1. The workman Manpreet Kaur has directly filed statement of claim under section 2-A of the Industrial Disputes Act, 1947 (hereinafter called the Act), with a prayer to reinstate the workman with back wages.

2. During the pendency of the proceedings before this Tribunal the case was fixed for filing affidavit by workman.

3. Since the Ld. Counsel of workman has withdrawn the present case, therefore there is no need to proceed the case further. Hence the present case is dismissed as withdrawn. File after completion be consigned in the record room.

4. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1239.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**. के पंचाट (14/2020) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी–I)-168]

सलोनी, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.14/2020*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-I* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2024-IR (B-I)-168]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.

ID No.14/2020

Registered on:-11.11.2020

Ms. Anita Devi, # 726/28, Bapu Dham Colony,Sector-26,Chandigarh

…….Workman

Versus

1.State Bank of India, Local Head Office, Sector-17-A, Chandigarh. Through its General Manager.

2. State Bank of India, Grain Market Sector-26, Chandigarh. Through its Branch Manager.

..….Managements

AWARD

Passed On:-24.04.2024

1. The workman Anita Devi has directly filed statement of claim under section 2-A of the Industrial Disputes Act, 1947 (hereinafter called the Act), with a prayer to reinstate the workman with full back wages.

2. During the pendency of the proceedings before this Tribunal the case was fixed for remaining evidence of workman. The workman Smt. Anita Devi has made a statement that she is not interested in pursuing the case and the same may be dismissed as withdrawn, which is recorded separately.

3. Since the workman has withdrawn the present case, therefore there is no need to proceed with the case further. Hence the present case is dismissed as withdrawn. File after completion be consigned to the record room.

4. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1240.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोटक महिंद्रा ओल्ड म्यूचुअल लाइफ इंश्योरेंस लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-I के पंचाट (84/2018) प्रकाशित करती है।

[सं. एल - 12012/32/2018- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.84/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-I* as shown in the Annexure, in the industrial dispute between the management of Kotak Mahindra Old Mutual Life Insurance Ltd. and their workmen.

[No. L-12012/32/2018-IR (B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.

ID No.84/2018

Registered On: 30/11/2018

Sh. Joginder Pal Singh, S/o Sh. Sardar Singh, R/o 1420, Gali Guru Nanak Haveli Able Waian Chowk, Jai Singh, Amritsar(Punjab)-143001.

.....Workman

Versus

The Managing Director, Kotak Mahindra Old Mutual Life Insurance Ltd., Building No. 21, Journal A.K. Vaidya Marg, Malaad(East) Mumbai-400097.

Branch Manager, Kotak Mahindra Old Mutual Life Insurance Ltd., SCO 2nd Floor Above Diwan Sahib Ranjit Avenue, District Shopping Complex, Amritsar(Punjab)-143001.

.....Managements

AWARD

Passed On: 25.04.2024

Central Government vide Notification No. L-12012/32/2018 (IR(B-I) dated 13.11.2018, under clause (d) of Sub-Section (1) sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Kotak Mahindra Old Mutual Life Insurance Limited in terminating the services of workman Sh. Joginder Pal Singh S/o Sh. Sardar Singh w.e.f. 06.12.2013 is legal, fair and justified? If not, what relief the workman is entitled to and from which date?"

1. During the pendency of the proceedings before this Tribunal the case was fixed for filing replication by workman but none is responding on behalf of workman since long i.e. from 25.11.2019. It is submitted by the Ld. Counsel for the management that workman is not turning up since long and prayed for dismissal of the present claim petition.

2. Perused the file and it is found that the submissions made by the Ld. Counsel for management is true. Several opportunities have already been given to the workman for filing replication by workman but of no use, which denotes that the workman is not interested in adjudication of the matter on merits as such, this Tribunal is left with no choice except to pass a 'No Claim Award'. Accordingly, no claim award is passed in the present case for the non-prosecution of workman. File after completion be consigned in the record room.

3. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1241.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-I के पंचाट (6/2010) प्रकाशित करती है।

[सं. एल - 12012/09/2010- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 6/2010*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-I* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/09/2010-IR (B-I)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer.

Case No.6/2010

Registered on 24.02.2017

Rajinder Kumar, S/o Sh. Giyan Chand, R/o Village Kambawal, PO Mandhala, Tehsil Baddi, Distt. Solan, Himachan Pradesh.

…...Workman

Versus

The Assistant General Manager, Adm., State Bank of India, Regional Office, Punjab, SCO No.103-110, Opposite K.C. Theatre, Sector 17-B, Chandigarh. …Management

AWARD

Passed On:-14.03.2024

Vide Order No.L-12012/09/2010-IR(B-I), dated 02.06.2010, the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

"Whether the action of the management of State Bank of India in terminating services of Sh. Rajinder Kumar w.e.f. 24.04.2004 is legal and justified? If not, what relief the workman concerned is entitled to?"

1. Both the parties were put to notice and workman filed statement of claim with the averment that he joined the service with the respondent-bank as Clerk on 01.10.1982 at Main Branch, Ludhiana, Punjab. Consequently in the year 1984, he was transferred to Air Force Station Branch, Chandigarh. The workman has performing his duties with full devotion and without any complaint of any kind till 1989.

2. It is alleged in Para 3 of the claim statement that he was put under suspension vide order dated 12.09.1989. An FIR was also registered against the workman on the ground that he had defrauded the bank and misappropriated

some amount. The Police had filed 24 challans against the workman before Judicial Magistrate, First Class, Chandigarh and trial was also heading the said challans. The management also initiated departmental proceedings against the workman as management sensed that criminal cases will not succeed against the workman. The action of the management in initiating departmental proceedings was against the Shastri Award. The enquiry was conducted against the workman ex parte and the same concluded on 19.03.2009. Due to ill-health, workman did not join the proceedings and has informed the enquiry officer regarding the illness from time to time.

3. The management has already made his mind to dismiss the workman from service. The workman was not supplied with the documents during the course of the domestic enquiry. The order of the punishment was passed by the disciplinary authority on 31.03.2004 whereby workman was dismissed from service. The disciplinary authority has confirmed the order of the punishment vide order dated 24.04.2004. Thereafter, an appeal was filed by the workman against the order of the management which was also rejected by non-speaking order.

4. The management has contested the claim of the workman by filing written statement wherein preliminary objections has been taken. It is alleged that workman was dismissed from service by the competent authority after holding fair and proper enquiry. The workman was given full opportunity to participate in the enquiry. On merits, management denied most of the allegations.

5. Initially in this case vide order dated 24.02.2016 issues were framed and it was held that issue of fairness of inquiry would be adjudicated along with other issues. However, later on vide order dated 24.04.2018 it was decided to treat the issue of fairness of domestic inquiry as preliminary issue. In preliminary enquiry workman himself got examined as WW2 and also examined Dr. Rohit Khurana, MD Medicine, Khurana Hospital, Pinjore as WW1. On the other hand management has filed affidavit of Sh. G.B. Rastogi, Deputy Manager, State Bank of India, Sector 17, Chandigarh. However, later on management on 29.08.2012 made statement that it does not want to lead any evidence.

6. It is added here that my Predecessor Sh. A.C. Dogra vide its order dated 28.08.2018 has held that the enquiry conducted in the present case is not fair and proper and opportunities were given to the management to lead evidence.

7. It is pertinent to mention here that the opportunity of the management for adducing evidence was closed by my Predecessor on 17.07.2023 as management failed to adduce evidence and the case was fixed for arguments.

8. Workman filed written arguments, alleging therein that the workman joined as Clerk on 01.10.1982 at Ludhiana and therafter was transferred to Air Force Station, Chandigarh in the year 1984. The workman was performing his duties with full devotion and without any complaint till 1989. The workman was put under suspension vide order dated 12.09.1989 and FIR in the year 1990 was also registered against the workman on the ground that he had defrauded the bank and misappropriated some amount. 24 challans were filed by the police against the workman before Ld. JMIC, Chandigarh and workman was ultimately put to trial in 1995 and during this period workman was not served any charge sheet. The preliminary issue was framed on 24.02.2016 with regard to fairness of inquiry and the workman led his evidence and this Tribunal after considering the evidence of workman passed an order dated 28.08.2018 and held that domestic inquiry conducted against the workman is unfair and against the principle of justice and the management was given opportunity to lead evidence. The management was given sufficient time to lead evidence and this Tribunal passed an order 17.07.2023 whereby the opportunity of management to lead its evidence was closed. Therefore, the punishment order is liable to be quashed and the workman is entitled for reinstatement into service with full back wages and continuity of service along with consequential benefits in the interest of justice.

9. Management has not filed any written arguments but argued the case orally.

10. I have heard Ld. Counsels for the parties and have gone through the entire record of the case.

11. It is settled position of law that if the Industrial Tribunal has come to the conclusion that domestic enquiry is illegal because it was conducted against the principle of natural justice against the workman, respondent-bank is under legal obligation to prove the misconduct/charges against the charged employee before the Tribunal in order to prove the charges against the charge-sheeted workman. It is also fairly settled that in any industrial dispute, the respondent-bank is required to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made of the judgment of Supreme Court in the case of ***Union of India Vs. Sardar Bahadur(1974)4 SCC 618, R.S. Singh Vs. State of Punjab and Other(1999)8 SCC page 90, State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013.***

12. It is a settled principle of law as laid down by the Hon'ble Supreme Court in the case of ***Neeta Kaplish Vs. Presiding Officer, Labouir Court, arising from Appeal(Civil) 6079 of 1998, decided on 04.12.1998***, that record

pertaining to the domestic enquiry would not constitute fresh evidence and the management is required to prove its case on fresh evidence. The Hon'ble Supreme Court has held as follow:-

"The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the management ceased to be "material on record" within the meaning of section 11-A of the Act and the only course open to the management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the management has to suffer the consequences."

Thus, the proposition of law which emerges from the judgment of Hon'ble Supreme Court is crystal clear and management has to prove the charges on the basis of fresh evidence but the management-bank has not led any oral and documentary evidence for the reasons best known to it.

13. It is also added here that respondent-bank has even not examined the enquiry officer as witness in this Court despite of the fact that Sh. A.C. Dogra my Ld. Predecessor has pointed out in his order dated 28.08.2018. Thus, enquiry proceeding stands vitiated on this score alone.

14. Since no new evidence has been led by the management before this Tribunal, so finding of my Ld. Predecessor Sh. A.C. Dogra dated 28.08.2018 cannot be reversed.

15. Now the question arises whether the claimant/workman is entitled to any incidental relief of payment of back wages and or reinstatement in service with continuity of service. It is added here that the workman had attained the age of superannuation on 31.07.2017 and he remained compulsory retire from 31.03.2004 to 31.07.2017. It is added here that workman has not pleaded anything about his post employment after his compulsory retirement from service in his claim statement as well as in his affidavit.

16. The Hon'ble Supreme Court in the case titled as ***"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324*** has held as under:-

"The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages the adjudicating authority or Court may to take into consideration the nature of job and misconduct if any found proved against the employee/workman the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

17. The Hon'ble Punjab & Haryana High Court while referring different judgments of Hon'ble Supreme Court including ***Deepali Gundu Surwase(supra),*** and ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** as well as in the case of ***Tapash Kumar Paul Vs. BSNL,(2014) 15 SCC 313, Surender Kumar Verma Vs. Central Government Industrial Tribunal-cum-Labour Court,(1980) 4 SCC 443,*** has observed that there cannot be a straight jacket formula for awarding relief of back wages along with all the relevant benefits. More or less, it can be address to the discussion of the Tribunal with full back wages could be the normal rule and the party objecting to it must establish. The circumstances insisting the departure at this stage, the

Tribunal while exercises its consideration keeping in view of the relevant circumstances but the discretion must be exercises judiciously must be cogent and convincing and must be appear on the face on record. When it is within the discussion of the authority that something has to be done according to the rules, reasons and justice is not according to law and not he humour it is not arbitrary, vague but legal and regular.

18. So far as the facts and evidence of the case is concerned, nothing has been stated in the claim petition and affidavit with respect to the post employment after alleged compulsory retirement by the workman. Thus, the facts in the claim petition lacks the basic requirement for providing back wages. No doubt, this Tribunal has got power to mould a relief or cover it. The incidental relief for the consequences rendered by illegal compulsory retirement of the workman.

19. In these circumstances, where workman has superannuated on 31.07.2017, the workman is entitled for 25% back wages from the date of compulsory retirement upto the date of superannuation with all retiral benefits under the relevant rules. The management-bank is directed to pay the aforesaid benefits to the workman within 2 months from the publication of the award. The reference is answered accordingly.

20. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

KAMAL KANT, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1242.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (60/2008) प्रकाशित करती है।

[सं. एल - 12012/11/2008- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.60/2008*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/11/2008-IR (B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/60/2008

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Mukesh Jawa

S/o. Late Shivnath Jawa

6, Residency Area,

Near Lok Sewa Commission Office**,** Indore

Workman

Versus

The Assistant General Manager-III

State Bank of India

Zonal Office, Local Head Office,

Hoshangabad Road, Bhopal M.P.

Management

(J U D G E M E N T)

(Passed on this 5th day of April 2024)

As per letter dated 11/04/2008 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/11/2008 IR(B-1) dt. 11/04/2008. The dispute under reference relates to:

"Whether the action of management of Assistant General Manager-III State Bank of India, Zonal Office Bhopal in issuing orders of dismissal from service to Shri Mukesh Jawa S/o. Late Shivnath Jawa w.e.f. 25.08.2005 is justified ? If not, to what relief the workman is entitled to ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. Both the sides appeared and filed their Statements of Claim and Defense.

According to the workman, he was first appointed as a Waterman in the Bank in Godha Colony Branch at Indore on 27.09.2002 and was made permanent on 09.04.2003. He was issued a charge sheet on 27.01.2004 leveling following charges against him:-

1. That he committed theft in the midnight of 19.07.2003 in the Branch and was detained by Police where he confessed his crime.

2. That, stolen articles belonging to the Bank, 1 monitor, 1 keyboard, 1 CPU & 1 printer, were recovered by Police from his possession.

He denied the charges in his explanation and stated that he was falsely implicated and recovery was also planted against him by Police in connivance with some co-workers who were his enemies inimical. The Bank instituted a departmental enquiry against him vide order dated 10.02.2004. Enquiry Officer and presenting Officer were appointed and enquiry was conducted against him. His prayer that the enquiry be stayed till the decision of criminal case against him was turn down. The Enquiry Officer wrongly held him guilty of the charges of misconduct. The Disciplinary Authority wrongly concurred with the findings and ignoring his representation on the enquiry report, passed the punishment of dismissal from service. The appellate authority also wrongly dismissed his appeal. He was acquitted by the Court of Magistrate after trial from all the charges. Thereafter, he again file a representation before the management to reinstate him on the ground that he was acquitted from the charges by Criminal Court but it was wrongly dismissed by the management though the basis of the charges was one and same in the departmental enquiry and criminal trial. Accordingly, he has prayed that setting aside his dismissal, he be reinstated with back wages and benefits.

The case of management is mainly that the workman was charged of theft in the branch and stolen property belonging to the bank was recovered from his possession by Police. A First Information Report was registered against him and he was sent to jail where he remained in judicial custody for 47 days and was released on bail. The enquiry was conducted as per rules and he was found guilty of the charges. The Disciplinary authority rightly awarded punishment ignoring his representation on the enquiry report and appeal was also rightly dismissed. Also has been stated that pendency of Criminal, Trial or Acquittal from the charges has no effect on departmental enquiry because standard of proof of charges is not the same. Management has thus prayed that the reference be answered against the workman.

On the basis of pleadings, following issues were framed :-

1. ***Whether departmental enquiry conducted against workman is proper and legal ?***
2. ***Whether charges imposed against workman are proved from the evidence in the enquiry ?***
3. ***Whether the punishment is proportionate to the charges ?***
4. ***If not, to what relief the workman is entitled ?***

Issue no.-1 was taken as preliminary issue. The workman did not file any evidence nor did he examine any witness. Management examined its witness and proved enquiry papers Ex. M/1 to Ex. M/10.

On the basis of the evidence on record, preliminary issue was decided against the workman holding the departmental enquiry legal and proper. This order is part of this award.

Parties were given opportunity to lead evidence on remaining issues. No evidence was given by any of the parties.

At the stage of argument, non appeared for the workman, hence argument of learned Counsel for Bank Shri Pranay Choubey were heard by him and the record has also been perused by me.

Issue No.-2:-

It comes out from perusal of enquiry papers during enquiry, management examined its witness who stated that he had got the FIR registered against the workman and also stated about recovery of the stolen of properties from the possession of the workman by Police. He further stated that this matter was reported in news papers next date and also that the workman remained in jail for 47 days and them he was released on bail. There is nothing in his cross examination to discredit him. The only defense of the workman during the enquiry, as it is apparent from the enquiry papers is that he was falsely implicated and recovery was planted.

The settled law is that the standard of proof required to prove a charge during enquiry and in criminal trial is different. In the former, charge is to be proved to the extent of preponderance whereas in the later, charge is to be proved beyond reasonable doubt.

Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. Ref. ***T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255***

Standard of proof in a departmental enquiry which is quasicriminal/quasi-judicial in nature: Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasijudicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Ref: ***(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 (paras 10 , 11, 12 & 13). (ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 (Para 25)***

*In the cases noted below, it has been held that if the same set of facts gives rise to both civil and criminal liability, both the proceedings i.e. civil and criminal may go on simultaneously. Ref.***: (i) Medchi Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd., 2000 (2) JIC 13 (SC) (ii) Lalmani Devi vs. State of Bihar, 2001 (1) JIC 717 (SC) (iii) Amar Pal Singh vs. State of U.P., 2002 (1) JIC 798 (All) (iv) Atique Ahmad vs. State of U.P., 2002 (2) JIC 844 (All) (v) Ajeet Singh vs. State of U.P., 2006 (6) ALJ 110 (All-F.B.)**

In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, *it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."*

In the case of ***T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255****, it has been held by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.*

In the cases of ***Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425****, the distinction between departmental enquiry and criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of*

proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "

IN ***Judgment dated 20.05.2022 of the Supreme Court in Civil Appeal No. 3490/2022, State Bank of India Vs. K.S. Vishwanath. (ii) Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jaya Bhay, 2022 LiveLaw (SC) 3*** *it has been held that acquittal in criminal trial has no bearing or relevance on disciplinary proceeding as the standard of proof in both the cases are different.*

Since the witness examined during the enquiry is supported by corroborating evidence in form of FIR, recovery of stolen goods and the fact that after investigation charge sheet was filed against the workman by Police, the finding of the Enquiry Officer holding the charges proved is held perfectly legal and issue no.-2 is answered accordingly.

Issue No.-3 :-

The settled proposition of law is that Courts will not interfere in the punishment unless it is found to be shockingly disproportionate to the charges.

Hon'ble Apex Court in ***B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749*** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."

In ***DG, RPF vs. Sai Babu (2003) 4 SCC 331***, Hon'ble Apex Court has observed that:

"6……. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works."

In ***United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364*** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

In ***Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257*** Hon'ble Supreme Court reiterated the legal position as follows:

"8. …… The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

In ***State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580*** Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

Hon'ble Apex Court in *Administrator,* ***UnionTerritory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101*** has observed that

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

In the instant case the workman, committed gross misconduct; whereby he opened a bank account in fictitious name and not only operated the same on many occasions; but also, in order to suppress his misdeeds, he destroyed the material/record related to it. This fraudulent act of the workman was prejudicial to the interests of the Bank.

Needless to point out that the act of fraud speaks ill of the honesty and integrity of the workman concerned. This is definitely an act prejudicial to the interest of the Bank, which leads to loss of faith in the workman. In ***Air India Corporation Bombay vs. V.A. Ravellow 1972 (25) FLR 319 (SC)*** it has been observed that:

"Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed."

In ***Knhaiyalal Agarwal and others vs. Factory Manager, Gwaliar Sugar Co. Ltd. AIR 2001 SC 3645*** Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

"(i) the workman is holding the position of trust and confidence; (ii) by abusing such position, be commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing the inconvenient to the employee, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved."

In ***State Bank of India and another v. Bela Bagchi and others AIR 2005 SC 3272*****,** repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence.

Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

Thus, the Bank being a financial institution dealing with the public money, the employees of the Bank are required to exhibit utmost honesty and integrity in day to day transaction/functioning. The act of dishonesty or fraud or misappropriation lowers down the reputation of Bank in public. The public lose their confidence in Bank, which affects Bank's business and finally the national economy.

In the case in hand, the charges proved are acts of moral turpitude. As regards the case of the workman that he was acquitted from the charges after trial, photocopy of judgment on record shows that he was acquitted giving him benefit of doubt. Hence, this fact will also not help him. On the basis of above discussion the punishment is held not disproportionate to the charge and issue no.-3 is answered accordingly.

Issue No.-4 :-

In the light of findings recorded, the workman is held entitled to no relief.

Accordingly, the reference is answered as follows :-

A W A R D

Holding the action of management of Assistant General Manager-III State Bank of India, Zonal Office Bhopal in issuing orders of dismissal from service to Shri Mukesh Jawa S/o. Late Shivnath Jawa w.e.f. 25.08.2005 justified, he is held entitled to no relief. No order as to cost.

DATE:- 05/04/2024

P. K. SRIVASTAVAKAMAL Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **70/2021**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/05/2024** को प्राप्त हुआ था।

[सं..एल. 22012/54/2021-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.70/2021***)* of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **M.C.L.** and their workmen, received by the Central Government on **18*/06/2024***

[No. L-22012/54/2021 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,

Presiding Officer, C.G.I.T.-cum-LabourCourt,

Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 70/2021

Date of Passing Order – 24th January, 2024

Between:

1. The Director, Personnel, MCL, Jagruti Vihar,
   Burla, Sambalpur, Odisha – 768 020.
2. The General Manager (P & IR),
   MCL, Jagruti Vihar, Burla, Sambalpur, Odisha – 768 020.
3. The General Manager, Kaniha Area, MCL,
   At. Lingraj Area Officer, Deulber, Talcher,
   Angul, (Orissa) – 759 117.

… 1st Party-Managements.

(And)

1. The General Manager, Bhubaneswari
   Coal Field Contractual Transport
   Workers Union (MCCTWU), Angul, (Orissa) – 759 117.
2. The President, Anchalika Thika Mazdoor Suraksha Sangha (ATMS),

Kaniha, Angul, (Orissa) – 759 117.

… 2nd Party-Unions.

Appearances:

None. … For the 1st Party-Managements.

None. … For the 2nd Party-Union.

ORDER

In the present case, a reference was received from the appropriate Government vide letter No. L.-22012/54/2021/IR(CM-II) dated 16.11.2021under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, for adjudication of a dispute, under the following schedule:-

"Whether the demand of the Union i.e. Mahanadi Coalfields Contractual Transport Workers Union (MCCTWU) and Talcher Coalfields Anchalik Thika Mazdoor Sangha)ATMS),Talcher,Dist.Angul, Odisha for payment of ex-gratia/conventional Bonus to the contract workmen equal to what is paid to the regular workers i.e. Rs. 68,500/- is just, fair and legal when they have already been paid exgratia as paid during last year by the respective contractor in different areas engaged with the management of MCL Coal field at Talcher Area as a customary one?If not, to what relief the said Unions are entitled to?

2. Whether the uniform bonus is possible when the contract workers working under different contractors who are not entitled for bonus under Payment of Bonus Act, 1952 but who ex-gratia at uniform rate for the financial year 2019-2020, when the Bonus/exgratia depends upon financial condition of each employer and the contractors are separate establishment is just fair and legal? If not what relief the said workmen are entitled to?

2. In the reference order, the Under Secretary to the Government of India, Ministry of Labour, New Delhi commanded the parties raising the dispute to file statement of claim, complete with relevant documents, ist of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.

3. Despite directions so given, no statement of claim is received from the 2nd party-Unions.

4. On receipt of the above reference, notice was sent to the 2nd Party-Union on 29.06.2022 and on dated 17.04.2023 for appearance and for filing of statement of claim. Neither the postal article sent to the 2nd Party-Unions, referred to above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred to above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Union. Despite service of the notice, the 2nd Party-Unions opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the 2nd Party-Union is not interested in adjudication of the reference on merits.

5. Since the 2nd Party-Union has neither filed statement of claim nor has led any evidence so as to prove its cause against the Management, it is presumed that there is no claim of workman against the Management.

6. In view of such, no claim Order is passed by this Tribunal.

7. Let this order be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (सन्दर्भ संख्या **68/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/05/2024** को प्राप्त हुआ था।

[सं. एल. 22012/93/2019-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.68/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **M.C.L.** and their workmen, received by the Central Government on **18*/06/2024***

[No. L-22012/93/2019 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,

Presiding Officer, C.G.I.T.-cum-Labour

Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 68/2019

Date of Passing Award – 18th August, 2023

Between:

1. The General Manager,
   Kaniha Area of MCL,
   At./Po. Deulbera, Talcher,
   Angul (Orissa) – 759 122.
2. M/s. S.N. Hota,
   Security Agency, Kaniha Area of MCL,
   At./Po. Deulbera, Talcher,
   Angul, Orissa – 759 122.

… 1st Party-Managements.

(And)

The President,
Orissa Security & service Employees' Union,
Qtr. No. 1, Block-1, Central Colony,
Po. South Balanda, Talcher, Dist. Angul
Orissa, Pin – 759 116

… 2nd Party-Union.

Appearances:

None. … For the 1st Party-Managements.

None. … For the 2nd Party-Union.

O R D E R

In the present case, a reference was received from the appropriate Government vide letter No. L.-22012/93/2019 – IR(CM-II) dated 09.12.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, under the following schedule:-

"Whether the demand of the Union for the regularization of service of 47 number of contractual workers (as per list) working under the

contractor M/s. S.N. Hota, Security Agency of Kaniha Area of MCL is legal/justified? If not, what relief the workmen are entitled to?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.

3. Despite directions so given, the 2nd Party-Union opted not to file the claim statement.

4. On receipt of the above reference, notice was sent to the 2nd Party-Union on 06.02.2020 and on dated 24.04.2023 for appearance and for filing of statement of claim. Neither the postal article sent to the 2nd Party-Union, referred to above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred to above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Union. Despite service of the notice, the 2nd Party-Union opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the Union is not interested in adjudication of the reference on merits.

5. Since the 2nd Party-Union has neither filed statement of claim nor has led any evidence so as to prove its cause against the Management hence there is no claim of the 2nd Party-Union against the Management.

6. In view of such, no claim award is passed by this Tribunal.

7. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **फूड कारपोरेशन ऑफ़ इंडिया लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण -सह - श्रम न्यायालय, कोलकाता** के पंचाट **(संदर्भ संख्या 31/2003)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं.एल. 22012/380/2002–आई.आर. (सी.एम–II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 31/2003*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India Ltd.** and **their workmen** received by the Central Government on 18/**06/2024**

[No. L-22012/380/2002 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 31 OF 2003

Parties : Employers in relation to the management of

Food Corporation of India

AND

Their Workman

Appearance :

On behalf of Management : Mr. Basabjit Banerjee, Advocate

On behalf of the Union under Order of Reference : Absent.

On behalf of Added Party (Union) : Mr. M.S. Dutta, Advocate.

Dated: 12th June, 2023

A W A R D

By Order No L-22012/380/2002 (CM-II) dated 13-10-2003, the Central Government, Ministry of Labour in excise of the power conferred under sub section 1(d) and (2A) of section 10 of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this Tribunal: –

"The demand of the Indian Confederation of Labour (ICL) for regularisation of 86 erstwhile casual labour of OJM Depot, Budge Budge into the services of FCI is justified or not? If not, to what relief they are entitled?"

The Management of Food Corporation of India is present through its Ld. Counsel.

Food Corporation of India Workers' Union is also represented by its Ld. Counsel, but none appears from the side of the Indian Federation of Labour, the one which has espoused the present dispute.

The Ld. Counsel appearing for the Food Corporation of India Workers Union sated that it has been added as a party on the prayer of the management. This Union has no connection whatsoever with the dispute under reference. Food Corporation of India Workers Union was not the one which has espoused the present dispute. The Union has nothing to say in respect of the issue under reference and submits the Tribunal can pass appropriate order.

The record shows, today has been fixed for appearance of the Union which has espoused the dispute, in default, no dispute award will be passed.

The record further shows, since 04-05-2020 no one is appearing on behalf of the Union which has espoused the dispute. Record also shows the case was earlier fixed for adducing evidence from the side of the Union/Workmen, which it has failed to do so or comply.

The issue under reference itself shows it relates to regularisation of 86 erstwhile casual labour in FCI OJM Depot, Budge Budge. So, it is seen the dispute is raised in respect of casual workmen who are no more in the service of FCI and for their regularisation.

So, question may arise whether persons who are no more in service can seek regularisation? The answer will be negative. Had those casual labours been in the service then question of regularisation would have been applicable provided they could prove that they are rendering their services to the establishment of FCI against sanctioned posts or substantive posts and possess the qualification for the post. It is settled law regularisation cannot be a source of recruitment also.

Hence, this Tribunal is of view the claim made by the Union in respect of 86 erstwhile casual labours of OJM Depot, Budge Budge for their regularisation to be speculative and not sustainable. The case of the Union appears to be speculative.

Therefore, the reference is dismissed being not sustainable or maintainable. Accordingly, award to that effect is passed. Reference No. 31 of 2003 is disposed of.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय **सरकार जे पी एविएशन सर्विसेज प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह- श्रम न्यायालय, कोलकाता** के पंचाट **(संदर्भ संख्या 15/2020** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं. एल. 11012/01/2020-आई.आर. (सी.एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 15/2020*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **J.P. Aviation Service Pvt. Ltd.** and **their workmen** received by the Central Government on 18/**06/2024**

[No. L-11012/01/2020 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present:Justice K. D. Bhutia, Presiding Officer.

REF. NO.15 OF 2020

Parties: Employers in relation to the management of

J.P. Aviation Services Pvt. Ltd., (Contractor) Interglobe Aviation Limited, Indigo, Gurgaon (Principal Employer)

AND

Their Workmen

Appearance :

On behalf of Management : None

On behalf of the Workmen : None

Dated 6th March, 2023

A W A R D

The Management and the Union are found absent when the matter is called.

As per record, notice of the present reference case have been duly served upon both the Principal Employer and Contractor Employer as per A.D Card and Track Report.

Notice of appearance sent to the General Secretary of Union through Regd. Post on 18.09.2020 has not returned, undelivered till date. Thus, a presumption can be drawn, the same has been duly served. However, notice sent by Speed Post on 19.01.2023 could not be served due to insufficient address as per track report.

As per record notice was sent to Sri Amrit Pandit, General Secretary, Bagdogra Airport Contractors workers Union, village Bhujia Pani Jote, PO & PS: Bagdogra, Darjeeling-734014 as given in the reference order.

Hence, nothing is there on record to show alternative or any other address of the Union, which has espoused the dispute before the Labour Commissioner and who referred the matter to the Govt. for reference.

Since, it is the Union who has raised the dispute then a duty is cast upon it to be diligent to see and take information about the fate of the issue or dispute raised by it before the Labour Commissioner and step taken by the concerned Govt. on the failure report submitted by conciliation officer.

That apart non-return of the Regd. Envelope addressed to the General Secretary of Union containing notice of reference sent in 2020 till date, it can be assumed the Regd. Envelope was duly served upon the addressee.

Therefore, none appearance of the representative of the Union to pursue the matter and its failure to file W/S or claim statement. It can be safely assumed, the Union is no more interested to pursue the dispute raised by it and which as per referenced Order No. L-11012/1/2020-I.R (CM-I) dated 09.07.2020.

"Whether the action of the contractor (M/s J.P Aviation Services Limited) and Principal Employer (M/s Interglobe Aviation Limited) by not enhancing the Dearness Allowance w.e.f. 01.10.2018 of Contract Workmen deployed for the work of loading / unloading work at Bagdogra Airport without giving notice of change u/s 9A of I.D Act, is legal and/or justified? If not, what relief the workers are entitled to?

In the above, the present reference case No. 15 of 2020 is dismissed.

Award is passed accordingly.

Send copy of Award to the Ministry for doing the needful.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **फूड कारपोरेशन ऑफ़ इंडिया लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह– श्रम न्यायालय, कोलकाता** के पंचाट **(संदर्भ संख्या 49/2015)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं. एल-22011/09/2015-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 49/2015*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India Ltd.** and **their workmen** received by the Central Government on 18**/06/2024.**

[No. L-22011/09/2015 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 49 OF 2015

Parties: Employers in relation to the management of

Food Corporation of India

AND

It's Workman

Appearance:

On behalf of Food Corporation of India: Absent

On behalf of the Workman: Mr. Uddipan Banerjee Advocate

Dated: 17th day of July, 2023

A W A R D

The concerned workman is present along with his Lawyer.

The Management of Food Corporation of India is found absent.

More so, today has been fixed for exparte evidence from the side of the workman as management of FCI has failed to put appearance and file its written statement.

Thus, the present reference is taken up for exparte hearing.

The workman files his evidence in chief on affidavit. He is further examined on oath as W.W. no.1 and discharged.

Documents namely, copy of conciliation failure report dated 13-05-2015, copy of letter dated 05-01-1993 written by the Assistant Manager, Food Corporation of India to the District Manager along with an annexure, copies of three receipts of payment made to the concerned workman by authority of FCI, copy of letter of the workman addressed to the Regional Manager, Food Corporation of India seeking job as a group D in the corporation and a copy of letter of Assistant Labour Commissioner (Central) dated 04-03-2015 have been produced by the concerned workman have been marked as Exhibit-W/1, Exhibit-W/2, Exhibit-W/3, Exhibit-W/3A, Exhibit-W/3B, Exhibit-W/3C, Exhibit-W/4 and Exhibit-W/5 respectively.

Heard the Ld. Counsel for the workman.

By order No.L-22011/09/2015(IR) (CM-II) dated 03-08-2015, Govt. of India, Ministry of Labour in exercise of power conferred under section 10(1)(d) and (2A) of the Industrial Dispute Act,1947 has referred the following dispute to this Tribunal for adjudication :-

"Whether the action of the Food Corporation of India is justified for denying the retrenchment compensation and terminating the service of Shri Karali Prasad Karmakar is legal and/or justified? If not, what relief the workman is entitled to?'

The case of the concerned workman is that Food Corporation of India in the early 1992, had set up an office at Howrah Railway Siding. The Food Corporation of India to carry out its day to day work of unloading and loading of food materials from and to Railway wagons and trucks had deployed 53 office staff to working in the office and two casual daily rated workers.

The concerned workman was one of those two casual daily rated workmen. His job was to supply drinking water to office staff and labours engaged for unloading and loading purpose. He continuously worked from 1992 till he was terminated from the service on13-08-2001. That he was not paid salary for the month of August 2001.

At the time of termination he was not paid any benefit under section 25F of the Industrial Dispute Act. That he was paid only Rs.15/- per day from 12-04-1992 to 12-08-2001 in violation of the minimum wages as fixed by the concerned Govt. Therefore, he prays for passing appropriate order so that he may get justice and due relief.

On perusal of the documents that have been produced and exhibited by the concerned workman this day, especially annexure to Exhibit-2 shows that Sri Karali Prasad Karmakar was engaged for 88 days only for the period from April, 1992 to December, 1992 as a water carrier engaged by virtue of local office of Food Corporation of India office letter dated 20.04.92.

Further, Exhibit-3 series show he was engaged only for 8 days for supplying drinking water to the staff and labours of Food Corporation of India attached to Howrah Railway Siding in the month of June, 1992 and as such he was paid Rs.120/- in total at the rate of Rs.15/- per day. Similarly, Exhibit-3/A shows, that he worked for 6 days in the month of November, 1992 and for 10 days in the month of April, 1993 and in the year 1998 he was paid Rs.750/- from petty cash advance. Exhibit-3 series shows that the concerned workman used to supply drinking water at Food Corporation of India office at Howrah Railway Siding only for few days in a month. From Exhibit-3 series an inference can be drawn that whenever there used to be unloading of food grains from Railway wagons at that time only the service of the concerned workman was availed by FCI officials i.e. for supply of drinking water to the staff who used to remain in the Railway Siding and the labours who were engaged by the Food Corporation of India to do the unloading and loading works.

That Exhibit-4 shows that the concerned workman had requested Sr. Regional Manager, Food Corporation of India to provide him a job in the Group-D category in the corporation as he was supplying drinking water to its staff at Howrah Railway siding since April 1992.

A question may arise a person who occasionally supply drinking water to a govt. offices and payment is made to him from contingency fund the day drinking water is supplied, whether such person can be treated as a permanent employee of the Govt. office and if the office stops taking drinking water supply work from him, then he say that he was retrenched?

The answer is simply "NO" as Government establishment cannot engage any permanent staff without adhering to the recruitment rules and regulations applicable to it and there has to be sanctioned post lying vacant. Food Corporation of India being an establishment of Govt. of India it is governed by recruitment rules and regulations either framed by the Govt. of India or by itself. It has to notify the vacancy after proper advertisement and need to hold test or interview.

Further, nothing has come on record to show that the concerned workman had rendered services as a casual workman in the establishment of FCI for more than 240 days in a year. In fact the exhibited documents discussed above prima facie show his job was to supply drinking water to the staff and labour of the Food Corporation of India at Howrah Railway siding, whenever there used to be unloading of food grains from railway wagons. Further he has failed to prove existence of any permanent post of Food Corporation of India at Howrah Railway Siding against the job rendered by him.

That apart, he has failed to prove that in the year 1992 till 2001 there was a permanent vacancy of a Group-D staff in the establishment of Food Corporation of India and he possessed all the requisite qualification that is required for post of Group-D staff. Merely a person casually or seasonally rendered his services to an establishment as a daily rated worker cannot claim regularisation or absorption as he was well aware of the nature of his engagement. The Exhibit-4 itself prove the concerned workman was aspirants to get a job in Food Corporation of India as a Group-D staff, admitting the fact that he was merely engaged to supply drinking water supplier at Howrah railway siding to FCI labour and staff engaged in unloading and loading of food grains.

For the sake of argument even if he assumes that he was retrenched by the management of Food Corporation of India from his job on 13-08-2001 as alleged by him in paragraph 3 of his claim statement, then as per the provision of 2A of the Industrial Dispute Act, 1947 he needs to espouse the dispute within three years from the date of his so called retrenchment.

Exhibit-1 prima facie shows that the concerned workman had raised an Industrial Dispute before the Assistant Labour Commissioner- Central, Calcutta, under section 2A of the Industrial Dispute Act alleging his illegal termination by Food Corporation of India on 30-10-2012 i.e. almost eleven years after his alleged termination and which is barred by limitation in view of provision of section 2A(3) of the Industrial Dispute Act. So, it is not known how the Assistant Labour Commissioner (Cental), could refer the dispute to the Govt. for making reference to this Tribunal. It appears that the Assistant Labour Commissioner has acted as a Post Office and did not apply his mind while referring the matter and has over looked the provision of section 2A of the Industrial Dispute Act.

Considering the nature of the case and facts and circumstance of the documents which have come on record the claim and case of the concerned alleged workman appears to be speculative and misconceived. The concerned

workman not being an employee of the Food Corporation of India in any category question of his termination and extending him retrenchment compensation by the management of Food Corporation of India does not arise.

The case of the concerned workman appears to be based on surmise and conjecture and he is not entitled to get any relief.

The Reference Case no.49 of 2015 being misconceived is dismissed. Accordingly, an award of dismissal is passed.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **कोल् इंडिया लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण -.सह -श्रम न्यायालय, कोलकाता** के पंचाट **(संदर्भ संख्या 05/2022)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं. एल. 22012/66/2021-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 05/2022)** of **the Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **Coal India Ltd.** and **their workmen** received by the Central Government on 18/**06**/**2024**

[No. L-22012/66/2021 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present:Justice K. D. Bhutia, Presiding Officer.

REF. NO.05 OF 2022

Parties: Employers in relation to the management of **Coal India Ltd.**

AND

Their Workmen

Appearance :

On behalf of Management, **Coal India Limited** : Mr. Saptarshi Mukherjee, Ld. Advocate

On behalf of the Workmen/**Union** : Absent

Dated 11th September, 2023

A W A R D

The Management of Coal India Ltd. is present through its Ld. Counsel, but the Union which has espoused the dispute has not been appearing despite due service of notice upon it.

Therefore a presumption can be drawn that it is no more interested to pursue with the dispute raised by it or it has no dispute with Management on the disputed issue, which is "Whether non-inclusion of National Front of Indian Trade Unions (NFITU) & Rashtriya Colliery Mazdoor Congress (RCMS) union while constituting the Joint Bipartite Committee on Coal Industry(JBCCI) vide letter dated 10.06.2021 (copy enclosed) by M/s. Coal India Ltd. is legal and justified? If not, what relief the concerned unions are entitled to?".

Such dispute has been referred to this Tribunal by the Central Govt., Ministry of Labour vide its order No. L-22012/66/2021-IR(CM-II) dated 03.01.2022.

Therefore, in view of above No Dispute Award is passed and Reference Case No. 05 of 2022 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **फूड कारपोरेशन ऑफ़ इंडिया लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण .- सह - श्रम न्यायालय, कोलकाता** के पंचाट **(संदर्भ संख्या 02/2023)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं. एल. 22011/01/2023-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 02/2023*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India Ltd.** and **their workmen** received by the Central Government on 18**/06/2024.**

[No. L-22011/01/2023 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present:Justice K. D. Bhutia, Presiding Officer.

REF. NO.02 OF 2023

Parties: Employers in relation to the management of

M/s. Goutam Das Security Agency and Food Corporation of India

AND

Their Workmen

Appearance :

On behalf of Management, **M/s. Goutam Das Security** : Absent

Agency and Food Corporation of India

On behalf of the Workmen / **Union** : Absent

Dated 4th September, 2023

A W A R D

Parties are found absent when the matter is called. Record shows notice have been duly served upon the Union, which has espoused the dispute and the Principal Employer Food Corporation of India as per track reports. While notice sent to Contract Employer has returned with postal endorsement " in sufficient address". There is no other alternative address of the contractor Employer serve and except there one given in the order of reference. So, Tribunal has no other alternative option to serve notice upon Contractor Employer.

Further, none appearance of the Union which has espoused the present dispute and the Principal Employer despite due service of notice upon them , a presumption / inference can be drawn that Union is no more interested to proceed with the dispute perhaps it has settled the same with both the employer.

However, the Central Govt., Ministry of Labour by order No. L-22011/01/2023 –IR (CM-II) dated 09.01.2023 has referred the following issue for adjudication.

"Whether the demand raised by the Food Corporation of India Shramik Union vide letter dated 03.01.2022 (copy enclosed) against the Service Provider M/s. Goutam Das Security Agency, Kolkata and the management of Food Corporation of India is proper, legal & justified? If yes, what relief the concerned union is entitled to and what directions, if any, are necessary in this respect?".

In view of the above No Dispute Award is passed accordingly, Reference case No. 02/2023 is disposed of.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मिस स्पाइस जेट (I) लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, कोलकाता** के पंचाट **(संदर्भ संख्या 68/2014)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं. एल-11012/40/2014-आई.आर. (सी.एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 68/2014)** of **the Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **M/s Spice Jet (I) Ltd.** and **their workmen** received by the Central Government on 18/**06**/**2024.**

[No. L-11012/40/2014 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 68 OF 2014

Parties: Employers in relation to the management of

J. P. Construction.

AND

Their Workman

Appearance:

On behalf of M/s. Spice jet (I) Ltd.: Absent

On behalf of J.P Construction: Absent

On behalf of the Workman: Mr.Govinda Das Mitra, Advocate

Dated: 27th day July, 2023

A W A R D

By Order No L-11012/40/2014 (IR)(B CM-I) dated 15-10-2014, the Central Government, Ministry of Labour in excise of the power conferred under sub section 1(d) and (2A) of section 10 of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this Tribunal: –

"Whether the action of the management of J .P. Construction, Contractor of Spicejet (I) Ltd. by terminating the service of Sri Subhankar Mahesh is legal and justified? If not, to what relief the workman is entitled to?"

The facts giving rise to this case are that, the concerned workman Sri Subhankar Mahesh was engaged by M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. a contractor/service provider of M/s. Spicejet (I) Ltd. to drive passenger buses of M/s. Spicejet (I) Ltd. within the tarmac of Dum Dum Airport in the month of September, 2005.

The workmen working under M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. became agitated when they found unfair labour practice being adopted by M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. and they being exploited by paying wages far below the rate to which they were entitled under Minimum Wages Act, bonus being not paid as per the Bonus Act and deprivation of over time allowance as per payment of Wages Act.

Therefore, the concerned workman along with other workmen who were/are members of NSCB International Airport Casual and Contract Workers Union, filed a representation before Mr. Sougata Roy, M.P., of Dum Dum Parliamentary Constituency through e-mail on 10-12-2009. In response to their representation Mr. Sougata Roy, M.P. requested the Managing Director of M/s. Spicejet (I) Ltd. to look into the matter and to take appropriate steps. On

receiving such direction from the M.P., M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. became extremely annoyed and vindictive to its employees and teach them a lesson it terminated the service of the workman on 01-01-2010.

That the concerned workman raised an industrial dispute through the Union for his reinstatement by sending a letter dated 12-10-2012 but his employer did not pay any heed to such representation. Then the Union raised a dispute before the Labour Commissioner where the employer did not attend.

That on failure of conciliation the Govt. has referred his cause to this Tribunal under section 10(1) (d) of I.D. Act for adjudication.

The record shows that M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd., the employer of the concerned workman failed to put appearance and pursue with the present case, whereas M/s. Spice (I) Ltd. had put its appearance but has failed to file its written statement. However, M/s. Spicejet (I) Ltd. had cross examined the workman. Thereafter, M/s. Spicejet (I) Ltd. also failed to pursue the matter. Therefore, the present case has been proceeded exparte against the contractor employer M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd..

The workman in order to prove his case has examined himself as W.W. No.1. That he has produced driving permit issued to him by Airport Authority of India and wage slips issued by /s. J.P. Construction alias J.P. Aviation Pvt. Ltd., copy of petition filed before Mr. Sougata Roy, M.P., copy of letter of Mr. Sougata Roy, M.P. to Managing Director, M/s. Spicejet (I)N Ltd., letter of Union to A.L. C. Dated 12-10-2012 and which have been marked as Exhibit-W/1, W/ 2(collectively), W/3, W/4 and W/5.

It is the case of the concerned workman, he was appointed as a Driver of M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. in the year 2005 to drive passenger vehicles of M/s. Spicejet (I) Ltd. within the tarmac of Dum Dum Airport. Such fact stands proved and corroborated by Exhibit-W/1. It further shows that such driving permit was valid up to 31-08-2006. From where it can be safely inferred that the workman was indeed engaged by the contractor employer in the year 2005.

Further, Pay slips issued by M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. in the name of the workman, for working for M/s. Spicejet (I) Ltd., Kolkata and marked as Exhibit-W/2 (collectively) show that the workman was paid salary by M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. and which relate to the years 2005, 2007, 2008, 2009 and 2010 and the last pay slip was dated 01-02-2010 for working eight days in the month of January, 2010. The other pay slips show, every month the workman used to work for 26 days. That he was paid basic salary, HRA, Conveyance Allowance, Washing Allowance, Efficiency bonus and replace duty. Wage slip shows that he was paid wages from the year 2005 till January, 2010.

The Exhibit-W/1 and Exhibit-W/2 collectively leave no room for doubt that the applicant/workman was indeed an employee of M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. That he rendered his service as a Driver of passenger buses of M/s. Spicejet (I) Ltd. which ply within the tarmac of Dum Dum Airport.

Further, those pay slips prove that he had continuously worked for more than 240 days in a calendar month. Therefore, in view of section 25-B of the I.D. Act, he is presumed to have rendered continuous service to M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. since 2005 till January, 2010.

Exhibit-W/3 and W/4 further prove indeed that the employees of M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd., a service provider/ contractor of M/s. Spicejet (I) Ltd. who were posted to work at Dum Dum Airport had filed a complaint petition before Mr. Sougata Roy, M.P. of Dum Dum Parliamentary Constituency, for deprivation of holidays, C.L., P.L., sick leave, wages not being paid on merit and designation or seniority, non-payment of allowance etc. Sri Sougata Roy, M.P. appears to have given direction to the Managing Director, M/s. Spicejet (I) Ltd. to look into the representation made by its contractor' employees in the month of December 2009. The termination of the workman was taken place on 1st January 2010. Therefore, an assumption can be drawn that the employer M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. in order to teach a lesson to its employees deployed to work at Dum Dum Airport for M/s. Spicejet (I) Ltd. for raising complaint against it before the M.P. has dismissed the concerned workman.

Exhibit-W/5 shows that the workman was retrenched from his service on 01-01-2010 by M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd., a contractor of M/s. Spicejet (I) Ltd. and as such the union has raised an industrial dispute before the A.L.C.(central) Kolkata, demanding his reinstatement.

The Ld. Counsel for the workman in support of the case of the workman has referred to the following citations:-

1.Mohan Lal vs Management of Bharat Electronic Ltd., 1981 AIR 1253,

2. H.D.Singh vs Reserve Bank of India & Oers., 1986 AIR 132,

3.State Bank of India –vs- Sri N. Sundaramoni, 1976 AIR 1111 and

4. Krishna Kumar Dubey –vs- U.P. State Food and Essential Commodities, FLR, 1989 (58).

Gone through the decisions cited by the Ld. Counsel for the workman and where it has been held that termination of service of a workman who has put in 240 working days within a period of one calendar year amounts to retrenchment for noncompliance of the provisions of section 25-F of the Act and such termination of service is void ab initio.

The evidence of the workman prima facie shows that he was terminated from his service by his employer M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. without complying the provisions of section 25-F of the I.D. Act, after putting more than 5 years continuous service or that he was served with notice of termination or given an opportunity of being heard before termination. Therefore, such termination of the workman tantamount to retrenchment as defined in section 2(00) of I.D. Act when there is no strict compliance of the requirement of section 25-F.

In view of the above discussions the action of the management of M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. terminating the service of Sri Subhankar Mahesh, is held to be illegal.

However, the workman neither in his claim statement nor in his evidence on affidavit has alleged that after termination of the service by his employer w.e.f.01.01.2010 he is still unemployed and not gainfully employed elsewhere. In the absence of such plea and evidence, this Tribunal is not inclined to pass any order of reinstatement with back wages in favour of the concerned workman, but his termination being in contrary to the provisions of section 25-F of the I.D. Act, the employer M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. is hereby directed to pay wages for the notice period and a compensation of Rs. two lakh for illegal termination as no order of reinstatement with back wages is passed in favour of the concerned workman have been passed.

M/s. J.P. Construction alias J.P. Aviation Pvt. Ltd. is hereby directed to pay the above due to the workman within two months from the date hereof, in default, the workman shall be entitled to realise the same as per the law.

Accordingly, Reference No.68 of 2014 is disposed of and award is passed in favour of the workman.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **दनकूनी कोयला परिसर** के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण अधिकरण – सह– श्रम कोलकाता** के पंचाट **(संदर्भ संख्या 09/2000)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं. एल. 22012/326/1999-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 09/2000)** of **the Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **Dankuni Coal Complex** and **their workmen** received by the Central Government on **18/06/2024.**

[No. L-22012/326/1999 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present:Justice K. D. Bhutia, Presiding Officer.

REF. NO.09 OF 2000

Parties: Employers in relation to the management of

The Chief General Manager, Dankuni Coal Complex

AND

Their Workmen

Appearance :

On behalf of Management : Utpal Mitra

On behalf of the Workmen : Saibal Mukherjee21

Dated 16th January, 2023

A W A R D

The Government of India, Ministry of Labour, in exercise of the powers conferred by section 10(1(d) & 2A of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this tribunal vide its office order number L – 22 012/326/99/IR(CM–II) dated 27.1.2000.

"Whether the action of the management of Dankuni Coal Complex(SECL) in not considering the seniority to Shri Tapas Bhattacharjee, Clerk – Special grade with effect from 1992 at par with Shri Subrata Bhaduri, Clerk Special Grade is justified? If not, to what relief is the workmen entitled?"

The facts giving rise to the present reference in gist is that the concerned workman Shri Tapas Bhattacharjee, joined the establishment of the Management, Eastern Coal Fields at Sripur Area in year 1977. Later, he was promoted as a clerk grade III in the year 1978 and Grade II in the year 1979. He was promoted as a clerk grade I in the year 1986.

In view of notice circulated by Coal India Ltd, for filling the post of different categories of manpower at Dankuni Coal Complex, the concerned workmen applied for

transfer. He was asked to appear for an interview for such transfer. On being selected he was transferred to Dankuni Coal Complex , vide order dated 28.11.89 as a clerk Grade I, but his seniority was placed in the bottom of the gradation list. He joined Dankuni Coal Complex as a clerk grade I on 21.12.89.

One Subrata Bhaduri was working as a Clerk at Dankuni Coal Complex since 16.06.1986 and he was promoted to the post of clerk grade I on 12.12. 1987 and to the post of clerical special grade on 01.04.1990. Later, he joined post of accountant cadre on 20.02.1996.

He/union alleges that management ignoring or overlooking the facts that he was promoted as a clerk grade I in the year 1986, and whereas Subrata Bhaduri in the year 1987, promoted the latter as a clerk special grade in the year 1993 by superseding him.

He/union has further alleged, there were other employees named Shri A. Roy Chaudhary, Smt. Shamli mandal, Shri Deepak Das and Shri Arun Banerjee, who were transferred from different collieries of Eastern Coalfields to Dankuni Coal Complex in the year 1987. That they were promoted to the post of Clerk grade I in the year 1989, after considering their seniority of service while they were in different collieries of Eastern coalfield Limited, while in his case such fact was not considered.

It has also been alleged publications of provisional inter se seniority list by the management in respect of non-executive employees of Dankuni coal complex on 03.12.1997 was full of anomalies and discriminating. The union raised such issue before the management, but management did not pay any heed and as such union had to move Office of the labour commissioner. Unfortunately, labour commissioner too could not resolve the problem and as such referred the matter to the government for making reference before an industrial tribunal. Hence this reference case.

The management in its written statement has contended that concerned workman was initially appointed as commercial apprentice at Shripur area of Eastern Coalfield on 1st June,1977. Subsequently, he was promoted as a clerk grade III in the year 1978 and clerk grade II in the year 1986. His service was subject to transfer to the collieries and offices under the administrative control of Eastern Coalfields Ltd and not to any subsidiaries company which includes Dankuni Coal complex.

The concerned workman had sought the transfer from Shripur area to Dankuni Coal Complex voluntarily and on his own seeking and he was not transferred in the normal course of transfer by the company. The concerned workman and other employees who were transferred from their original place of posting to Dankuni Coal Complex, vide letter dated 20th November 1989 on the conditions "that they will not get transfer travelling allowance as the transfer is at their request. Their seniority in the existing grade in the Dankuni Coal Complex will be reckoned from the date they joined in Dankuni Coal Complex."

The concerned workmen accepting such terms and condition as provided in his transfer order dated 20 November 1989, joined the transferred post at Dankuni coal complex without raising any objection to such terms and condition at the time of joining. He joined Dankuni Coal Complex forgoing his seniority and on specific condition that his seniority in existing grade in Dankuni Coal Complex would be reckoned from the date he joined in Dankuni Coal Complex. Now, he cannot raise any objection or claim his seniority from the day he joined Shripur area of Eastern Coalfield Limited in the year 1977 or he cannot claim seniority above the then exiting employees in Dankuni

Coal Complex. The seniority is maintained unit wise department wise and not the inter-company wise. He cannot claim seniority above Shri. Bhaduri, who joined Dankuni Coal Complex as a clerk grade II on transfer from Bhadra Colliery, under Western Coalfields on 16.06.1986 and he was promoted as a clerk Grade I on 12.12 1987 at Dankuni Coal Complex much before he joined Dankuni Coal Complex in year 1989.

Shri Bhadra having completed five years service in the post of clerk grade I in Dankuni Coal Complex, he was eligible for consideration for the post of Special Grade in the year 1992. The concerned workman joined Dankuni Coal Complex, on 21 December 1989 and he was entitled for consideration for promotion in the year 1996 for the post of clerk special grade. On the recommendation of the Departmental Promotion Committee, the concerned workman was promoted to the post of clerk special grade in the year 1996. There was no anomaly with regard to the senior list of the concerned workman in the provisional interest seniority list published in the year 1991. With all these management has prayed for dismissal of the reference being not maintainable and without any basis.

The union has examined the concerned workmen Shri Tapas Bhattacharjee and one Debashish Gupta. The management has examined Shri S.B. Das Mahapatra.

The union has produced and exhibited as many as 25 documents and about which I shall be discussing in the later part of this award. On the other hand the management has produced and exhibited seven documents.

From the exhibited documents and from the evidence of the witnesses, it is seen the concerned workman Tapas Bhattacharjee was recruited by Eastern Coalfields Ltd in the year 1977 as a commercial apprentice and on completion of probation he joined as a clerk grade III in the year 1978 and in due course he was promoted as a clerk grade I in the year 1986.

On the other hand Subrata Bhaduri had joined the Western Coalfields Ltd as a Badli Mazdoor in the year1977. His service was regularised as a clerk grade III in the year 1978. He was promoted as a clerk grade II in 1979. He was transferred from Bhadra Colliery, under Western Coalfields to Dankuni Coal complex in June 1986 as a clerk grade II. He was promoted as a clerk great I in Dankuni coal complex in the year 1987, much before the joining of the present concerned workman at Dankuni Coal Complex, on 21 December 1989.

It has been contended that without following the Promotion Rules Ext.25, Mr Bhaduri was given promotion as a clerk grade-I, without completing three years of his service at Dankuni coal complex. That as per Ext. W-25, cadre scheme for ministerial staff for promotion to the post of clerk grade-I, the incumbent need to have three years experience as a clerk grade-II, but in case of Mr Bhaduri such rules was also overlooked by the management.

Since such incident took place much before the incumbent joined Dankuni Coal Complex, on 21 December 1989, this Tribunal holds the union or the incumbent workman cannot raise such issue after lapse of more than 14 years after the promotion. More so, I do not find any materials in the record to show such improper or irregular promotion of Mr. Bhadra was under challenge before any court of law or before any Industrial Tribunal. Therefore, the union is barred from raising such issue which it had acquiescence.

In order to determine the issue under reference it is necessary to discuss the brief history of Coal India Ltd and its Subsidiary Companies. Coal India Ltd is a public sector undertaking under the ownership of the Ministry of Coal, Government of India. It has eight subsidiaries namely Bharat Cooking Coal Ltd, Central Coalfields Ltd, Eastern Coalfields Ltd, Western Coalfields Ltd, South Eastern Coalfields Limited, Northern Coalfields Limited, Mahanadi Coalfields Ltd and Central Mine Planning and Design Institute.

Nothing has come on record to show that Coal India Ltd. constituted as Apex body recruits employees in clerical grade for its subsidiaries companies and it maintains their Gradation list on all India basis. In fact Ext.W-1 show the incumbent was recruited by Eastern Coalfields Ltd.(ECL) and his appointment letter was issued by office of the General Manager, Area Number II, Sripur, P.O. Kalipahari, Burdwan as a Commercial Apprentice on 01.06.1977. Ext.W-2 shows on completion of his probation period his service was regularised as a clerk grade -III on 20.06.78, by his appointing authority ECL.

Ext. W-2 further, shows the service of the incumbent was subject to transfer at the discretion of the management to any other Mines or to any Department under the administration of the Eastern coalfields Limited. That his service would be taken on the **ROLL OF THE EASTERN COALFIELDS LTD.** from the date of his joining duties in the

COLLIERIES/DEPARTMENT OF EASTERN COALFIELDS LTD.

Therefore, from Exhibit W-1 and Exhibit W-2, it is seen the concerned workman was appointed by Eastern Coalfields Limited and not by Coal India Ltd. the parent company. His area of duty was confined within the mines and departments of Eastern coalfield Limited and not beyond it.

It is a matter of common knowledge that Dankuni Coal Complex in West Bengal owned by Coal India Ltd is currently run by its subsidiary South Eastern Coalfields and not by Eastern coalfields Ltd.

Then a question may arise a person who is not a regular staff of Dankuni Coal Complex or that of South Eastern Coalfield and who joins Dankuni Coal Complex, run by South Eastern Coalfield on voluntary transfer from Eastern coalfields Ltd., can demand seniority above the existing employees of Dankuni Coal Complex in the same cadre or grade?

The answer is "**NO"** as an employee of Eastern Coalfields Ltd. one of Subsidiary Companies of Coal India Ltd. cannot supersede in the gradation list of the existing employees of same cadre/grade of Dankuni Coal Complex, run by South Eastern Coalfields Ltd., another Subsidiary Company of Coal India Ltd., and who was not the appointing authority or the employer of the concerned workman prior to his transfer.

From the exhibited documents filed by both sides it is seen the concerned workman was transferred from Eastern Coalfields Ltd. to Dankuni Coal Complex on his voluntarily seeking transfer and for his own convenience. Ext. W-5 transfer order dated 20.11.1989, shows that not only the present workman was transferred from Eastern Coalfields Ltd. to Dankuni Coal Complex but other seven workmen were also transferred in their existing grade on the condition they were not entitled to any transfer travelling allowance as the transfer was on at their request and their existing grade in Dankuni Coal Complex would be reckoned from the date they joined Dankuni Coal Complex and which clearly shows that on their joining Dankuni Coal Complex they will be placed in the bottom of the gradation list of the cadre/grade to which they belong. In other words since they had joined Dankuni Coal Complex forgoing their seniority of their parent department who had recruited them and where their service carrier was started or born. One should keep in mind that losing of seniority in new establishment does not mean there will be break in service or there will be no continuity in service. The service period will be counted from the day such transferred employees had joined his/her parent department from where he/she had sought transfer to another concern who was not his/her appointing employer for the purpose of calculation of service/pension benefits.

Since the concerned workman had accepted the terms and condition of his transfer from Eastern Coalfields Ltd. to Dankuni Coal Complex, as stipulated in Ext.W-5 and now he is barred from challenging the terms and condition of his transfer dated 20 November 1989 by filing the present reference in the year 2000 that is almost 11 years of joining the new establishment Dankuni Coal Complex.

Subrata Bhaduri having joined Dankuni Coal Complex, though on transfers from Western Coalfields Ltd. on 16.06.1986 as clerk grade-II was promoted as clerk grade-I by Dankuni Coal Complex on 12.12 1987, two years before the joining of the concerned workman at Dankuni Coal Complex on 12,12.1989 as Clerk Grade-I. More so, in view of his transfer order his seniority in existing Grade-I Clerk in Dankuni Coal Complex would be reckoned from the date of his joining Dankuni Coal Complex i.e.from 12.12.1989. The fact whether he joined the service before Subrata Bhaduri or he was promoted to Clerk Grade-I, before Subrata Bhaduri, in his parent department Eastern Coalfields Ltd. becomes immaterial. He having joined as Clerk Grade-I on 12.12.89 much after Subrata Bhaduri, who was already working as Grade-I Clerk on and from 12.12.1987 for Dankuni Coal Complex, cannot supersede an existing employee of Dankuni Coal Complex in the seniority. Therefore, from sheer imagination also we cannot say the present workman was senior to Subrata Bhaduri, the day he joined Dankuni Coal Complex.

Further, Exhibit W–12 dated 26th February, 1987 shows that Shri A Roy Chowdhury, Mrs Shamli Mandal, Shri Arun Kumar Banerjee and Shri Deepak Kumar Das all Grade-II Clerks of different Collieries of Eastern Coalfield Limited were transferred to Dankuni Coal Complex on the conditions that they were not entitled to transfer TA except the actual journey period. That their seniority in the grade would be fixed from the date of their joining in Dankuni coal complex. So, it further proves those employees of subsidiaries of Coal India Ltd. who seek voluntary transfer from one subsidiary to another subsidiary has to forgo the seniority maintained in his/her parent departments.

Exhibit W-13 shows the above four were promoted as Grade I Clerk on 02/06.05.1989, in Dankuni Coal Complex, within two years of them joining Dankuni coal complex. And much before the present workman joined Dankuni coal complex. Further, from Ext.W-13 it can be inferred that promotion to next higher grade was given even to those employees transferred from another subsidiary company, on occurrence of vacancy and provided they were having three years experience as Clerk Grade-II.

Therefore, in view of the discussion made above this tribunal does not find any merit in the present reference. The concerned workman named Shri Tapas Bhattacharjee is not entitled to get the relief as sought for.

Accordingly, the present reference is dismissed on contest and award is passed to that effect.

Reference case number 9 of 2000 is dismissed on contest, but without any cost.

Send copy of this award to the Ministry for doing needful.

Supply copy of this award to the parties as per law.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जून, 2024

का.आ. 1252.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अलवर भरतपुर आंचलिक ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण/श्रम न्यायालय **जयपुर** के पंचाट (16/1993) प्रकाशित करती

[सं. एल - 12011/56/89- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 19th June, 2024

S.O. 1252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.16/1993) of the Cent.Indus.Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the industrial dispute between the management of Alwar Bharatpur Anchalik Gramin Bank and their workmen.

[No. L-12011/56/89 – IR (B-I)]

SALONI, Dy. Director

ANNEXURE

समक्ष केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर, राजस्थान

Presiding Officer : Hariom Sharma Attri, RJS (DJ Cadre)

Central IT Case No. : 16/1993

CIS No. : 07/2014

रैफरैंस : भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल–12011/56/89– आई.आर.(बी–1) दिनांक 10.11.1993

विशन लाल वैरवा (मृतक दौराने कार्यवाही) पुत्र श्री भूरालाल बैरवा,

1/1 श्रीमति शांति देवी पत्नी स्व0 विशन लाल बैरवा

1/2 महेष कुमार पुत्र स्व0 विशन लाल बैरवा

1/3 नरेष कुमार पुत्र स्व0 विषन लाल बैरवा

1/4 श्रीमति पूजा करोल पुत्री स्व0 विशन लाल बैरवा

सर्वे निवासी– विज्ञानशाला, वार्ड नंबर 23, सवाईमाधोपुर।

——— प्रार्थी

ब ना म

अध्यक्ष, बडोदा राजस्थान क्षेत्रीय ग्रामीण बैंक, अजमेर

(प्रबंधक, अलवर भरतपुर आंचलिक ग्रामीण बैंक, भरतपुर)

——— अप्रार्थी

उपस्थित

प्रार्थी की ओर से : श्री आर0सी0 जैन

अप्रार्थी की ओर से : श्री अजय गुप्ता

दिनांक अवार्ड : 19.12.2023

अधिनिर्णय

भारत सरकार के श्रम मंत्रालय की उपरोक्त आज्ञा क्रमांक से निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है –

"Whether the claim of shri B.L. Bairwa, former branch manager, Angai Branch, Alwar bharatpur anchalik gramin bank, bharatpur that he is a workman is in order? If so, whether tha action of the management of Alwar bharatpur anchalik gramin bank in removing him from service vide letter dated 20.05.1987 is justified? What relief, if any, shri V.L. Bairwa is entitled to?"

प्रार्थी श्रमिक की ओर से स्टेटमेंट ऑफ क्लेम पेश कर अभिकथन किया है कि अप्रार्थी बैंक द्वारा आदेश दिनांक 09.06.1984 द्वारा प्रार्थी की ऑफिसर के पद पर 1000–1860 की वेतन श्रृंखला में नियुक्ति की गई थी। प्रार्थी के विरूद्ध विभिन्न आरोप लगाते हुये एक आरोप पत्र दिनांक 29.7.86 जारी किया गया था। प्रार्थी को आदेश दिनांक 5.5.1986 द्वारा निलम्बित किया जाकर अप्रार्थी बैंक की राशि का दुरूपयोग करते हुये गबन किये जाने के आरोप लगाये गये। अप्रार्थी बैंक द्वारा प्रार्थी के विरूद्ध फौजदारी कार्यवाही किये जाने की धमकी देने पर उससे 49,000/–रू0 राशि व 24/–रू0 ब्याज के पृथक से जमा कराये जाने के बावजूद लगाये गये आरोपों के संबंध में कोई घरेलू जांच कार्यवाही किये बिना प्रार्थी को सुनवाई का अवसर दिये बिना सीधे ही आदेश दिनांक 20.5.1987 द्वारा सेवापृथक कर दिया, जो अनुचित एवं अवैध है। प्रार्थी द्वारा उक्त सेवापृथक आदेश के विरूद्ध बोर्ड ऑफ डायरेक्टर के समक्ष अलवर भरतपुर आंचलिक ग्रामीण बैंक स्टाफ सर्विसेज रेगुलेशन्स 1982 के रेगुलेशन नंबर 31 के अन्तर्गत एक अपील पेश की गई, जिसे आदेश दिनांक 19.10.1988 द्वारा खारिज कर दिया गया। जिससे व्यथित होकर प्रार्थी द्वारा असिस्टेंट लेबर कमिश्नर (केन्द्र) जयपुर के समक्ष शिकायत प्रस्तुत की गई परन्तु उभय पक्षों के मध्य कोई समझौता नहीं हुआ। प्रार्थी द्वारा उसके सेवापृथक आदेश को माननीय उच्च न्यायालय में जरिये पिटीसन संख्या 2507/1990 चुनौती दी गई थी, जिसमें माननीय उच्च न्यायालय द्वारा आदेश दिनांक 4.8.1993 द्वारा प्रार्थी को औद्योगिक विवाद अधिनियम 1947 की धारा 2(एस) के अन्तर्गत श्रमिक की परिभाषा में मानते हुये उक्त विवाद निर्णय दिनांक से 2 माह के भीतर श्रम न्यायालय/औद्योगिक न्यायाधिकरण को प्रेषित करने हेतु केन्द्र सरकार को निर्देशित किया गया। जिसकी पालना में उक्त विवाद अधिनिर्णय हेतु इस न्यायायाधिकरण को प्रेषित किया गया है। अंत में प्रार्थी के सेवापृथक आदेश दिनांक 20.5.1987 एवं अपीलीय अधिकारी के आदेश दिनांक 19.10.1988 को अपास्त कर पुनः सेवा में लिये जाकर सभी लाभ दिलाये जाने की प्रार्थना की गई है।

विपक्षी बैंक की ओर से स्टेटमेंट ऑफ क्लेम का जवाब पेश कर अभिकथन किया है कि प्रार्थी सुपरवाईजरी प्रकृति का कार्य करने के कारण अधिनियम की धारा 2(एस) के अन्तर्गत श्रमिक की परिभाषा में नहीं आता है क्योंकि प्रार्थी की नियुक्ति आदेश दिनांक 9.6.84 द्वारा ऑफिसर के पद पर शाखा प्रबंधक, शाखा अंगई, जिला धौलपुर में हुई थी। प्रार्थी को बैंक के निदेशक मंडल द्वारा ऋण स्वीकृत करने एवं वितरण करने की पॉवर ऑफ एटॉर्नी दी गई थी। प्रार्थी स्वतंत्र रूप से बैंक की ओर से सुपरवाईजरी कार्य संपादन हेतु अधिकृत किया गया था। उसे अधीनस्थ कर्मचारियों की अवकाश स्वीकृत करने, मैडीकल भत्ता, यात्रा भत्ता स्वीकृत करने, कर्मचारियों के गोपनीय प्रतिवेदन भरने के अधिकार थे। प्रार्थी श्रमिक के विरूद्ध दुराचरण के आरोप पाये जाने पर आदेश दिनांक 5.5.86 द्वारा निलम्बित किया जाकर विस्तृत आरोप पत्र क्रमांक 29.7.86 जारी किया गया। प्रार्थी के विरूद्ध फौजदारी कार्यवाही करने की धमकी दिये जाने के कथन से इंकार करते हुये कथन किया है कि प्रार्थी द्वारा स्वयं जरिये पत्र दिनांक 28.6.86 बैंक की राशि का गबन किये जाने की गलती को स्वीकार करते हुये फर्जी ऋण वितरण की राशि 49000/–रू0 मय ब्याज के अप्रार्थी बैंक में जमा कराई गई है। प्रार्थी को बचाव एवं सुनवाई का अवसर देते हुये सेवापृथक के दण्ड से दण्डित किया गया है। प्रार्थी द्वारा प्रस्तुत अपील पर सुने जाने के पश्चात् प्राकृतिक न्याय के सिद्धांतों के अनुसार आदेश दिनांक 19.10.1988 द्वारा अपील खारिज की गई है। प्रार्थी द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम खारिज किये जाने योग्य है।

न्यायाधिकरण के आदेश दिनांक 16.08.1996 द्वारा घरेलू जांच की शुद्धता पर उभय पक्षों को सुना जाकर की गई जांच कार्यवाही को अशुद्ध एवं अनुचित घोषित किया गया। न्यायाधिकरण के आदेश दिनांक 19.11.1998 द्वारा प्रार्थी को सेवामुक्ति दिनांक को मिल रहे वेतन का 50 प्रतिशत अंतरित राहत के रूप में भुगतान करने के आदेश दिये गये। अप्रार्थी बैंक द्वारा प्रार्थी को अंतरिम राहत का भुगतान नहीं किये जाने पर अवार्ड दिनांक 5.7.2000 द्वारा प्रार्थी का सेवापृथक आदेश अपास्त कर पुनः नियोजन में लिये जाने के आदेश दिये गये।

उक्त अवार्ड दिनांक 5.7.2000 के विरूद्ध माननीय उच्च न्यायालय के समक्ष एक रिट याचिका संख्या 3871/2000 पेश की गई। माननीय उच्च न्यायालय में रिट के लम्बित रहने के दौरान अधिनियम की धारा 17(बी) के अन्तर्गत अप्रार्थी बैंक को आहरित वेतन भुगतान करने का निर्देश दिया गया। इस आदेश को माननीय राजस्थान उच्च न्यायालय की खण्ड पीठ में चुनौती दी गई, जिसे आदेश दिनांक 02.08.2007 द्वारा निरस्त कर दिया गया। अप्रार्थी बैंक द्वारा माननीय सर्वोच्च न्यायालय में एसएलपी दायर की। माननीय सर्वोच्च न्यायालय द्वारा आदेश दिनांक 13.4.2009 द्वारा अपील स्वीकार कर माननीय राजस्थान उच्च न्यायालय की एकल पीठ को धारा 17(बी) के प्रार्थना पत्र पर पुनः निर्णय पारित करने के आदेश दिये गये।

माननीय उच्च न्यायालय की एकल पीठ द्वारा अप्रार्थी बैंक की रिट याचिका स्वीकार कर आदेश दिनांक 17.02.2014 द्वारा अवार्ड दिनांक 5.7.2000 अपास्त कर प्रकरण को गुणावगुण पर निस्तारण हेतु न्यायाधिकरण को रिमाण्ड किया गया है।

न्यायाधिकरण द्वारा प्रकरण पुनः वाजवा नंबर पर दर्ज करते हुये पत्रावली साक्ष्य हेतु नियत की गई। विपक्षी बैंक की ओर से दिनांक 11.05.2015 को श्री श्याम सुंदर गुप्ता का शपथ पत्र पेष हुआ। प्रार्थी प्रतिनिधि द्वारा गवाह से जिरह नहीं किये जाने पर आदेश दिनांक 01.06.2016 द्वारा प्रार्थी प्रतिनिधि का गवाह से जिरह करने का हक बंद कर दिया गया। दिनांक 12.07.2016 को अप्रार्थी बैंक की ओर से कोई और गवाह पेश करना नहीं चाहने पर साक्ष्य विपक्षी बंद की जाकर पत्रावली साक्ष्य प्रार्थी में नियत की गई। प्रार्थी प्रतिनिधि को साक्ष्य पेश करने हेतु पर्याप्त अवसर दिये जाने के बाद भी साक्ष्य पेश नहीं करने पर आदेश दिनांक 30.10.2017 द्वारा साक्ष्य प्रार्थी बंद की जाकर पत्रावली बहस अंतिम हेतु नियत की गई।

प्रकरण के विचारण के दौरान प्रार्थी विशन लाल बैरवा का दिनांक 04.06.2020 को निधन हो जाने के कारण उसके विधिक वारीसान श्रीमति शांति देवी, महेश कुमार, नरेश कुमार एवं श्रीमति पूजा करोल द्वारा पक्षकार बनाये जाने हेतु प्रार्थना पत्र प्रस्तुत किये जाने पर आदेश दिनांक 19.4.2022 द्वारा पक्षकार बनाया गया।

उभय पक्षों की बहस अंतिम सुनी गई। पत्रावली का ध्यानपूर्वक अवलोकन व अध्ययन किया गया।

प्रार्थी के विद्वान प्रतिनिधि ने दौराने बहस कथन किया है कि प्रार्थी अधिनियम की धारा 2(एस) के अन्तर्गत श्रमिक की परिभाषा में आता है। प्रार्थी के केवल नियुक्ति आदेश व परिपत्र पेश हुआ है। प्रार्थी प्रतिनिधि ने तर्क दिया है कि क्या पद से ही श्रमिक माना जाता है? जबकि प्रार्थी श्रमिक को अप्रार्थी बैंक के एम्पलॉई रेगुलेशन के तहत चार्जशीट जारी की गई है, न कि ऑफिसर रेगुलेशन के तहत। न्यायाधिकरण द्वारा आदेश दिनांक 16.11.1998 को अंतरिम राहत भुगतान करने के आदेश हुये हैं, जिसे माननीय उच्च न्यायालय द्वारा अपास्त नहीं किया गया है, अतः अप्रार्थी बैंक द्वारा प्रस्तुत साक्ष्य पठनीय नहीं है। प्रार्थी श्रमिक के निधनोपरांत भी अप्रार्थी बैंक की ओर से उसके विधिक वारीसान को आज दिनांक तक एक भी पैसा भुगतान नहीं किया गया है। न्यायाधिकरण द्वारा विभागीय जांच को आदेश दिनांक 16.8.96 द्वारा अशुद्ध घोषित किया गया है और अप्रार्थी बैंक की ओर से जिस गवाह श्याम सुंदर गुप्ता का शपथ पत्र पेश किया गया है, वह प्रकरण में शिकायतकर्ता नहीं है। अप्रार्थी बैंक की ओर से मामले के तथ्यों के संबंध में मुख्य गवाह पेश नहीं किया गया है। प्रदर्शित दस्तावेज प्रदर्श एम–36 लगायत एम–268 जिनसे संबंधित है, वह साक्ष्य न्यायाधिकरण के समक्ष पेश नहीं की गई है। अप्रार्थी बैंक की ओर से प्रस्तुत गवाह की साक्ष्य से श्रमिक के विरूद्ध लगाये गये आरोप साबित नहीं माने जा सकते। प्रार्थी के विरूद्ध आरोप सिद्ध करने का भार स्वयं नियोजक पर है। प्रार्थी द्वारा सेवामुक्ति आदेश के विरूद्ध अपील प्रस्तुत की गई थी लेकिन उस पर कोई विचार किये बिना बैंक अध्यक्ष ने ही अस्वीकार कर दी। प्रार्थी को प्राकृतिक न्याय के सिद्धांतों के विपरीत जाकर एवं अधिनियम के प्रावधानों के विपरीत सेवापृथक किया गया है, जो अनुचित एवं अवैध है। अतः प्रार्थी का सेवापृथक आदेश अपास्त कर सभी लाभ दिलाये जावें। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं –

1. 2002 (93) एफएलआर 850 अमरनाथ चौधरी बनाम ब्रेथवाईट एण्ड कंपनी लि0 व अन्य।
2. 2015 (1) एससीसी (एलएण्डएस)251 छैल सिंह बनाम एमजीबी ग्रामीण बैंक
3. 2018(2) एससीसी (एलएण्डएस)625 यूको बैंक बनाम राजेन्द्र शंकर शुक्ला।
4. 2007 II एल एल जे 835 (एससी) फजिलका कोपरेटिव शुगर मिल्स बनाम जितेन्द्र कुमार गुप्ता व अन्य।
5. 2001 (1) एलएलएन 209 मेरी मेंडेस बनाम लाईटन होटल व अन्य।
6. 2004(103) एफ एल आर 39 हिंदुस्तान पेट्रोलियम कॉ0लि0 बनाम यषवंत रेडकार व अन्य।
7. 2008(3) डवल्यू एल सी 157 देवी सिंह बनाम स्टेट ऑफ राजस्थान व अन्य।
8. 2010(2) डवल्यू एल एन 23 यूनियन ऑफ इण्डिया व अन्य बनाम राजेन्द्र प्रसाद शर्मा व अन्य।
9. 2009 (1) एल एल एन 806 रूप सिंह नेगी बनाम पीएनबी बैंक।

10. 1971 (23) एफ एल आर 273 बरेली इलेक्ट्रिसिटी सप्लाई कॉ0लि0 बनाम श्रमिक व अन्य।

11. 1981 डवल्यू एल एन (यूसी)45 अमृतलाल बनाम स्टेट ऑफ राज0

12. 2016 (151) एफएलआर 701 रॉरकेला स्टील प्लांट बनाम इण्डस्ट्रियल ट्रिब्युनल

13. 2002 (93) एफएलआर 826 शरद कुमार बनाम एनसीटी गर्वनमेंट देहली।

अप्रार्थी बैंक के प्रतिनिधि द्वारा दौराने बहस कथन किया है कि प्रार्थी श्रमिक की परिभाषा में नहीं आता है। अप्रार्थी बैंक की ओर से गवाह श्याम सुंदर गुप्ता का शपथ पत्र पेष किया है, जिसने अपनी साक्ष्य से श्रमिक के विरूद्ध लगाये गये आरोपों को प्रमाणित किया है। प्रार्थी प्रतिनिधि द्वारा अप्रार्थी गवाह से कोई प्रतिपरीक्षा नहीं की गई है, जिससे अप्रार्थी बैंक की साक्ष्य अखण्डनीय रही है। प्रार्थी की ओर से अपने बचाव में कोई साक्ष्य पेश नहीं की गई है। प्रार्थी का कार्य सुपरवाईजरी प्रकृति का रहा है तथा वह शाखा प्रबंधक के पद पर कार्यरत था तथा प्रार्थी को कर्मचारियों के अवकाश स्वीकृत करने, टीए बिल, ऋण वितरण, एसीआर गोपनीय प्रतिवेदन भरने के अधिकार थे अतः वह श्रमिक की परिभाषा में नहीं आता है। प्रार्थी के विरूद्ध अनियमित ऋण वितरण के मामले पाये जाने पर 19 आरोप लगाते हुये आरोप पत्र जारी किये गये हैं। प्रार्थी द्वारा स्वयं अपनी गलती स्वीकार करते हुये गबन की गई राषि 49,000/–रू0 मय ब्याज जमा कराये गये हैं। अप्रार्थी बैंक को प्रार्थी के अनियमित ऋण वितरण के मामले की जानकारी होने पर अप्रार्थी बैंक द्वारा श्री श्याम सुंदर गुप्ता एवं श्री विनोद कुमार, सीनियर मैनेजर को जांच हेतु भेजा गया था, जिनके द्वारा जांच कर जांच रिपोर्ट बैंक को भेजी गई थी। प्रार्थी द्वारा आरोपों को स्वीकार करते हुये राशि जमा कराई गई है। अनुशासनिक अधिकारी द्वारा प्रार्थी के जवाब को कंसीडर करते हुये अप्रार्थी बैंक के एम्पलॉई सर्विस रेगुलेशन 1982 के सेक्शन 30–ए के तहत सेवापृथक के दण्ड से दण्डित किया गया है, जो उचित एवं वैध है। अप्रार्थी बैंक के गवाह द्वारा दस्तावेजों को प्रमाणित कराते हुये प्रार्थी के विरूद्ध लगाये गये आरोपों को साबित किया गया है। अतः प्रार्थी द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम खारिज किया जावे। अप्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :–

1. 1983(3) एसएलआर 233 के.जी. जानी बनाम स्टेट बैंक ऑफ सौराष्ट्रा, गुजरात

2. सी0ए0 नंबर 7412/1993 निर्णय निर्णक 14.12.1993 सुप्रीम कोर्ट ऑफ इण्डिया, बैंक ऑफ इंडिया बनाम अपूर्वा कुमार शाह

3. (1996) 9 एस सी सी 69 डिसिप्लेरी ऑथोरिटी कम रीजनल मैनेजर व अन्य बनाम निकुंजा बिहारी पटनायक

4. जे0टी01997(3) एस.सी. ताराचंद ब्यास बनाम चेयरमेन एण्ड डिसिप्लेनरी ऑथोरिटी

5. 2005(7) एस सी 85, अजीत कुमार नाग बनाम आईओसी

6. (2005)7 एस सी सी 338 वी0 रमण बनाम एपीएसआरटीसी व अन्य।

7. (2005)10 एस सी सी 84, दामोह पन्ना सागर रूरूल रीजनल बैंक व अन्य बनाम मुन्ना लाल जैन

8. 2007(3) एल एल एन 857 सिंदीकेट बैंक बनाम संजय कपूर।

9. (2008)3 एस सी सी 729 वेस्ट बोकरो कोलेरी बनाम राम प्रवेश सिंह।

10. (2009)9 एस सी सी 462, बैंक ऑफ बडोदा बनाम अनीत नंद्राजोग

11. (2009)10 एस सी सी 32, बीको लॉरी लिमिटेड व अन्य बनाम स्टेट ऑफ वेस्ट बंगाल व अन्य।

12. (2010)11 एस सी सी 233, पंजाब एण्ड सिंध बैंक बनाम दया सिंह

13. (2011)4 एस सी सी 584 स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर बनाम नेमी चंद नलवाया।

14. (2011)11 एस सी सी 355 स्टेट बैंक ऑफ इण्डिया बनाम हेमन्त कुमार।

15. एसबी सिविल रिट पिटीसन संख्या 1887/96 ताराचंद ब्यास बनाम बडोदा राजस्थान क्षेत्रीय ग्रामीण बैंक व अन्य।

16. 2009(1) डीएनजे 248 षिमला शर्मा बनाम प्रवीण

17. 1989(2) आरसीजे 397 मोहनलाल बनाम सज्जनमल व अन्य।

मैंने उभय पक्षों द्वारा दिये गये तर्कों पर मनन किया एवं पत्रावली का ध्यानपूर्वक अवलोकन व अध्ययन किया गया। उभय पक्षों की ओर से प्रस्तुत न्यायिक दृष्टांतों में प्रतिपादित सिद्धांतों का ससम्मानपूर्वक अवलोकन व परिशीलन किया गया।

राज्य सरकार द्वारा प्रेषित अधिसूचना में यह विवाद बिन्दु बनाया गया है कि क्या प्रार्थी श्रमिक की परिभाषा में आता है? अतः न्यायाधिकरण को सर्वप्रथम उक्त विवाद बिन्दु तय किया जाना है। औद्योगिक विवाद अधिनियम 1947 की धारा 2एस को निम्न प्रकार से परिभाषित किया गया है –

[(s) workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

v) who, being employed in a supervisory capacity, draws wages exceeding [59][ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

यह कि उक्त परिभाषा के परिपेक्ष्य में सर्वप्रथम यह देखना आवश्यक है कि क्लेम याचिका में दिये गये तथ्यों के अनुसार श्रमिक द्वारा केन्द्र सरकार को संबंधित प्रकरण को औद्योगिक अधिकरण को भेजने हेतु निवेदन किया गया था, जिस पर केन्द्र सरकार की ओर से अतिरिक्त श्रम आयुक्त (केन्द्रीय) जयपुर द्वारा पक्षकारान् के मध्य विवाद में प्रार्थी को श्रमिक न मानते हुये विवाद प्रेषित करने से इंकार कर दिया। तत्पश्चात् पत्रावली पर उपलब्ध तथ्यों को प्रार्थी द्वारा माननीय उच्च न्यायालय में एस.बी. सिविल रिट याचिका संख्या 2507/1990 दायर की गई। जिस पर सुनवाई उपरांत माननीय उच्च न्यायालय द्वारा याचिका को निस्तारित करते हुये केन्द्र सरकार के संबंधित विभाग को यह निर्देश जारी किये कि प्रार्थी श्रमिक की श्रेणी में आता है तथा उसका विवाद औद्योगिक अधिकरण को भेजे जाने योग्य है। श्रमिक की याचिका की मद संख्या 10 में याची श्रमिक द्वारा उपरोक्त तथ्यों का विस्तृत अंकन करते हुये उक्त आधारों पर खुद को श्रमिक की श्रेणी में मानते हुये प्रकरण में मांगे गये अनुतोष को दिलवाये जाने का निवेदन किया है।

इसके विपरीत उक्त मद संख्या का जवाब देते हुये अप्रार्थी द्वारा रिट याचिका 955/90 को दायर किया जाना स्वीकार किया है लेकिन इस तथ्य से इंकार किया गया है कि माननीय उच्च न्यायालय द्वारा प्रार्थी श्रमिक को उक्त याचिका के आदेश में श्रमिक मान लिया गया था।

यह अधिकरण इस प्रक्रम पर प्रार्थी के विद्वान प्रतिनिधि द्वारा दिये गये तर्कों पर बल पाती है कि इस न्यायालय द्वारा पारित पूर्ववर्ती अवार्ड दिनांक 5.7.2000 को अप्रार्थी द्वारा माननीय उच्च न्यायालय के सम्मुख चुनौती दी गई थी। माननीय उच्च न्यायालय द्वारा पारित निर्णय दिनांक 17.02.2014 के अवलोकन से यह सुस्पष्ट है कि उक्त अवसर पर अप्रार्थीगण द्वारा ऐसा कोई आक्षेप माननीय उच्च न्यायालय के सम्मुख दायर सिविल रिट याचिका संख्या 3871/2000 में नहीं लिया गया है कि प्रार्थी के श्रमिक की परिभाषा में न आने के दृष्टिगत औद्योगिक अधिकरण के सम्मुख यह विवाद पोशणीय नहीं था। माननीय उच्च न्यायालय के सम्मुख दायर याचिका में अप्रार्थी द्वारा साक्ष्य बंद किये जाने के आधार पर एकतरफा अवार्ड पारित किये जाने को चुनौती दी गई। अतः ऐसी कोई उज्रधारी इस अवसर पर देखी जानी अपेक्षित नहीं है। इसके अतिरिक्त यह भी उल्लेखनीय है कि अप्रार्थी बैंक द्वारा भी प्रार्थी के विरूद्ध जो कार्यवाही की गई है वह एम्पलॉई रेगुलेशन के तहत की गई है। उपरोक्त विवेचन के फलस्वरूप प्रार्थी औद्योगिक विवाद अधिनियम 1947 की धारा 2एस के तहत श्रमिक की परिभाषा में आता है।

यह भी उल्लेखनीय है कि अप्रार्थी द्वारा प्रस्तुत विनिर्णयों में उनके द्वारा ऐसा कोई न्यायिक दृष्टांत इस बिन्दु पर पेश नहीं किया गया है कि प्रार्थी श्रमिक की परिभाषा में नहीं आता हो। अतः उक्त बिन्दु पर इस अधिकरण के विनम्र मत में अन्य विवेचन शेष नहीं है तथा प्रार्थी को श्रमिक मानते हुये पत्रावली में शेष विचारण किया जा रहा है।

प्रकरण में दौराने बहस प्रार्थी प्रतिनिधि द्वारा मुख्य रूप से यह आपत्ति ली गई है कि माननीय उच्च न्यायालय द्वारा न्यायाधिकरण के अंतरिम राहत के संबंध में जारी आदेश दिनांक 19.11.98 को अपास्त नहीं किया गया है। अंतरिम राहत का आदेश आज भी अस्तित्व में है और अप्रार्थी बैंक द्वारा प्रार्थी को अंतरिम राहत का भुगतान नहीं किया गया है, अतः अप्रार्थी बैंक की साक्ष्य पठनीय नहीं है। इस संबंध में अप्रार्थी बैंक द्वारा दौरान बहस कथन किया है कि माननीय उच्च न्यायालय द्वारा

अवार्ड दिनांक 5.7.2000 अपास्त किया जाकर प्रकरण को पुनः गुणावगुण पर निस्तारित किये जाने के आदेश दिये गये हैं। मैंने माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 17.02.2014 का अवलोकन किया। माननीय उच्च न्यायालय द्वारा अपने आदेश दिनांक 17.02.2014 द्वारा अवार्ड दिनांक 5.7.2000 को अपास्त किया जा जाकर प्रकरण को न्यायाधिकरण को वापिस रिमांड करते हुये साक्ष्य लेने के उपरांत पिटीशनर अप्रार्थी बैंक को सुनवाई का अवसर देते हुये प्रकरण का निस्तारण किये जाने के आदेश दिये गये हैं। मेरे विनम्र मत में जब माननीय उच्च न्यायालय द्वारा ही अपने आदेश दिनांक 17.02.2014 में साक्ष्य लिये जाने के उपरांत अप्रार्थी बैंक को सुनवाई का अवसर देते हुये प्रकरण का निस्तारण किये जाने के आदेश दिये गये हैं तब ऐसी स्थिति में यह नहीं माना जा सकता कि अप्रार्थी बैंक द्वारा प्रार्थी को अंतरिम राहत का भुगतान नहीं किये जाने से उसकी साक्ष्य पठनीय नहीं रही हो, जबकि प्रार्थी प्रतिनिधि द्वारा माननीय उच्च न्याालय के आदेश दिनांक 17.02.2014 को अन्यत्र सक्षम न्यायालय में चुनौती भी नहीं दी गई है।

विद्वान प्रतिनिधि प्रार्थी द्वारा अपने तर्कों में जीवन निर्वाह भत्ता को अंतरिम राहत के रूप में दिये जाने के आदेश दिनांक 19.11.98 को चिन्हित किया है। अधिकरण के विनम्र मत में प्रार्थी के प्रतिनिधि द्वारा उक्त बहस का बिन्दु सर्वथा अव्यवहारिक एवं माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 17.02.2014 में दिये गये विवेचन के विपरीत है। उल्लेखनीय है कि माननीय उच्च न्यायालय द्वारा एस.बी. सिविल रिट पिटीसन संख्या 3871/2000 में पारित निर्णय दिनांक 17.02.2014 में यह सुस्पष्ट करते हुये कि इस अधिकरण का आदेश दिनांक 19.11.98 गुजारा भत्ता का आदेश नहीं है एवं न ही उसके समकक्ष है। माननीय उच्च न्यायालय द्वारा दिनांक 19.11.98 को इस अधिकरण द्वारा पारित आदेश में वर्णित 50 प्रतिषत मजदूरी को अंतरिम राहत के तौर पर माना है और इस तर्क से असहमति प्रकट की है कि उक्त राशि गुजारा भत्ता के तौर पर आदेशित राशि थी। माननीय उच्च न्यायालय ने अपने विवेचन में यह स्पष्ट अंकित किया है कि औद्योगिक अधिकरण द्वारा पूर्ववर्ती अवार्ड पारित करते समय यह विधिक त्रुटि कारित की है कि अधिकरण द्वारा गुजारा भत्ता भुगतान न होने पर उत्पन्न स्थितियों में पारित विनिर्णयों को आधार बनाकर अप्रार्थी की साक्ष्य समाप्त कर आपेक्षित पंचाट पारित किया था जबकि उक्त विनिर्णय औद्योगिक अधिकरण द्वारा औद्योगिक विवाद अधिनियम की धारा 11 के तहत की गई कार्यवाही पर लागू नहीं होते हैं। इस अधिकरण के विनम्र मत में यह एक बार माननीय उच्च न्यायालय द्वारा गुजारा भत्ता भुगतान के आधारों से असहमति प्रकट करते हुये प्रकरण में अप्रार्थी को साक्ष्य का अवसर देकर निर्णय करने हेतु इस अधिकरण को निर्देशित किया था तब इन परिस्थितियों में प्रस्तुत तर्क सारहीन एवं व्यर्थ है तथा जिन पर विवेचन आवश्यक नहीं है। इसी अनुक्रम में यह लिखा जाना भी समीचीन होगा कि उक्त संबंध में प्रस्तुत विनिर्णय हस्तगत प्रकरण पर चस्पा नहीं होते हैं।

अप्रार्थी बैंक द्वारा प्रार्थी के विरूद्ध आरोप पत्र दिनांक 29.7.86 जारी कर अप्रार्थी बैंक की राशि का दुरूपयोग करते हुये गबन किये जाने के आरोप में आदेश दिनांक 20.05.1987 द्वारा सेवापृथक के दण्ड से दण्डित किया गया है। उक्त सेवापृथक आदेश को चुनौती दिये जाने पर उक्त विवाद बिन्दु केन्द्र सरकार द्वारा न्याय–निर्णयार्थ प्रेषिम किया गया है। अपने विवाद के संबंध में अप्रार्थी बैंक की ओर से साक्ष्य में गवाह श्याम सुंदर गुप्ता का शपथ पत्र पेश हुआ है, जिससे प्रार्थी प्रतिनिधि द्वारा कोई जिरह नहीं की गई है तथा प्रार्थी श्रमिक की ओर से कोई गवाह साक्ष्य में पेश नहीं हुआ है।

प्रार्थी प्रतिनिधि द्वारा दौरान बहस यह आपत्ति ली गई है कि अप्रार्थी बैंक की ओर से श्याम सुंदर गुप्ता का शपथ पत्र पेष हुआ है, जो मुख्य शिकायतकर्ता नहीं है और मुख्य गवाह को साक्ष्य में पेश नहीं किया गया है। ऐसी साक्ष्य के आधार पर प्रार्थी के विरूद्ध आरोप प्रमाणित नहीं माने जा सकते। इस संबंध में अप्रार्थी प्रतिनिधि द्वारा दौराने बहस कथन किया है कि श्याम सुंदर गुप्ता एवं विनोद कुमार को निरीक्षण हेतु निर्देश दिये जाने पर मामले की पूर्ण जांच कर रिपोर्ट प्रस्तुत की गई थी। अतः श्याम सुंदर गुप्ता को प्रकरण के तथ्यों की पूर्ण जानकारी रही है तथा उनके द्वारा अपनी साक्ष्य से आरोप को प्रमाणित किया गया है। मैंने पत्रावली का अवलोकन किया अप्रार्थी बैंक की ओर से प्रस्तुत गवाह श्याम सुंदर गुप्ता ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि प्रार्थी को अधिकारी के पद पर आदेश दिनांक 9.6.84 द्वारा नियुक्त किया गया था, जो प्रदर्श–1 है। प्रार्थी को बैंक के निदेशक मंडल द्वारा ऋण स्वीकृत करने एवं वितरण करने की पॉवर ऑफ एटॉर्नी दी गई थी, जो प्रदर्श–2 है। प्रार्थी स्वतंत्र रूप से बैंक की ओर से सुपरवाईजरी कार्य संपादन हेतु अधिकृत किया गया था। उसे अधीनस्थ कर्मचारियों की अवकाश स्वीकृत करने, मैडीकल भत्ता, यात्रा भत्ता स्वीकृत करने, कर्मचारियों के गोपनीय प्रतिवेदन भरने के अधिकार थे। इस संबंध में जारी परिपत्र प्रदर्श–3 लगायत 5 है। अप्रेल 1986 में अप्रार्थी बैंक की आंगई शाखा का निरीक्षण करने हेतु भेजा गया था। उक्त अंकेक्षण के दौरान प्रार्थी द्वारा की गई अनेकों अनियमितताओं एवं ऋण वितरण में गबन के मामले प्रकाश में आने पर प्रार्थी से चर्चा करने पर उसके द्वारा स्वयं लिखित में दिनांक 28.4.86 को किये गये फर्जी ऋण वितरण एवं राशि स्वयं के उपयोग में लिये जाने के संबंध में बैंक अध्यक्ष को पत्र लिखा गया था तथा 19 ऋण खातों में किये गये फर्जी ऋण वितरण की राषि 49000/–रू0 मय ब्याज दिनांक 5.5.86 को आंगई शाखा में जमाकर समायोजित किये जाने बाबत् पत्र लिखा था, जो प्रदर्श–6 है, जिस पर ए से बी प्रार्थी विषन लाल बैरवा के हस्ताक्षर हैं। प्रार्थी द्वारा जमा कराई गई राशि के वाउचर प्रदर्श–7 लगायत 9 है। प्रार्थी द्वारा बैंक अध्यक्ष को पत्र लिखने से पूर्व मुझे पत्र दिनांक 23.4.86 लिखा गया था, जो प्रदर्श–10 है। प्रार्थी द्वारा जमा कराई गई राशियों के फर्जी खातों को समायोजित किये गये जिनके वाउचर प्रदर्श– 11

लगायत 28 हैं, जिन पर ए से बी विषन लाल वैरवा के हस्ताक्षर हैं। समस्त गबन एवं बैंक राशि के दुरूप्योग के मामले प्रकाश में आने पर बैंक द्वारा उसे व विनोद कुमार (वरिष्ठ प्रबंधक) को विस्तृत रूप से निरीक्षण करने हेतु निर्देश दिये गये, जिस पर उनके द्वारा जांच रिपोर्ट प्रस्तुत की गई, जो प्रदर्श–29 है, जिस पर ए से बी गवाह श्यामसुंदर के एवं सी से डी विनोद कुमार के हस्ताक्षर हैं। हमारी जांच रिपोर्ट पर प्रार्थी को आरोप पत्र दिनांक 29.7.86 प्रदर्श–30 जारी किया गया था, जिसका प्रार्थी द्वारा दिनांक 16.8.86 को जवाब प्रदर्श–31 प्रस्तुत किया गया था। तदुपरांत बैंक विनियमों के अन्तर्गत अप्रार्थी बैंक द्वारा आदेश दिनांक 20.5.1997 प्रदर्श–32 द्वारा सेवा से बर्खास्त कर दिया गया। उक्त आदेश के विरूद्ध प्रार्थी द्वारा अपील पेश की गई जो प्रदर्श–33 है, जिस पर प्रार्थी को सुनने के पश्चात् आदेश दिनांक 19.10.88 द्वारा प्रार्थी की अपील खारिज कर दी गई, अपील कार्यवाही प्रदर्श–34 एवं आदेश दिनांक 19.10.88 प्रदर्श–35 है। आरोप पत्र में वर्णित फर्जी ऋण वितरण एवं प्रार्थी द्वारा की गई कार्यवाही से संबंधित दस्तावेजात् प्रदर्श–36 लगायत 298 हैं।

प्रार्थी प्रतिनिधि द्वारा उक्त गवाह से प्रतिपरीक्षण नहीं किया गया है। अप्रार्थी बैंक द्वारा जो गवाह श्याम सुंदर गुप्ता पेश किया गया है, उसके द्वारा अप्रार्थी बैंक के निर्देश पर प्रार्थी की आंगई शाखा का अंकेक्षण कर विस्तृत जांच रिपोर्ट प्रदर्श–29 पेश की गई है। जब गवाह स्वयं के द्वारा प्रार्थी की बैंक शाखा का निरीक्षण किया गया है और उसकी व विनोद कुमार की रिपोर्ट के आधार पर प्रार्थी को आरोप पत्र जारी किया गया है तो यह नहीं माना जा सकता कि अप्रार्थी बैंक द्वारा मुख्य गवाह को साक्ष्य में पेश नहीं किया गया हो। मात्र विनोद कुमार के साक्ष्य में पेश नहीं होने से यह नहीं माना जा सकता कि अप्रार्थी बैंक के द्वारा मुख्य गवाह को साक्ष्य में पेश नहीं किया गया है जबकि श्याम सुंदर गुप्ता के द्वारा भी बैंक का निरीक्षण किया गया है और उसके द्वारा की गई समस्त कार्यवाही को अपनी साक्ष्य से प्रमाणित करवाया गया है और विनोद कुमार के हस्ताक्षर भी अपनी साक्ष्य से प्रमाणित कराये गये हैं। प्रार्थी प्रतिनिधि द्वारा गवाह से प्रतिपरीक्षण नहीं किया गया है, ऐसी स्थिति में गवाह की साक्ष्य अखण्डनीय रही है। प्रार्थी द्वारा स्वयं उसके द्वारा फर्जी ऋण वितरण के दौरान की गई अनियमितताओं के संबंध में राशि 49,000/–रू. मय ब्याज अप्रार्थी बैंक में जमा कराई गई है तथा इस संबंध में पत्र भी बैंक अध्यक्ष को लिखा गय है। जमा राशियों के वाउचर पत्रावली पर उपलब्ध है, जिन पर प्रार्थी के हस्ताक्षर है, जिन्हें गवाह ने अपनी साक्ष्य से प्रमाणित भी किया है। उपरोक्त विवेचन के फलस्वरूप अप्रार्थी बैंक द्वारा प्रस्तुत गवाह की साक्ष्य से श्रमिक के विरूद्ध लगाये गये आरोप प्रमाणित होते हैं।

मैंने उभय पक्षों द्वारा प्रस्तुत न्यायिक दृष्टांतों का ससम्मानपूर्वक अवलोकन व परिशीलन किया। प्रार्थी प्रतिनिधि द्वारा प्रस्तुत न्यायिक दृष्टांतों में प्रतिपादित सिद्धांत हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से भिन्नता रखते हैं। अतः प्रार्थी प्रतिनिधि द्वारा प्रस्तुत उक्त न्यायिक दृष्टांत हस्तगत मामले में चस्पा नहीं होते हैं। निष्कर्षतः प्रार्थी द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम स्वीकार किये जाने योग्य नहीं है। प्रकरण में निम्न अवार्ड पारित किया जाता है।

अधिनिर्णय

''प्रार्थी औद्योगिक विवाद अधिनियम की धारा 2एस के तहत श्रमिक की परिभाषाा में आता है लेकिन अप्रार्थी बैंक द्वारा प्रार्थी को आदेश दिनांक 20.05.1987 द्वारा सेवापृथक किया जाना उचित एवं वैध है। प्रार्थी कोई राहत पाने का अधिकारी नहीं है।''

हरिओम शर्मा अत्री, न्यायाधीश

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हरिओम शर्मा अत्री, न्यायाधीश

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